

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Appeal No.772 OF 2010**

Between:

Sadath Ali and others

... Appellants

And

The State of A.P,  
rep. by Public Prosecutor,

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 04.04.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.A. No.772 of 2010**

% Dated 04.04.2024

# Sadath Ali and others

... Appellant

And

\$ The State of Telangana  
rep. by Public Prosecutor

Respondent/Complainant

**! Counsel for the Appellants:** Sri M.Govind Reddy

**^ Counsel for the Respondent:** Public Prosecutor

**>HEAD NOTE:**

? Cases referred

<sup>1</sup> (2015) (7) SCC 178

<sup>2</sup> (2009) 11 SCC 106

**HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.772 OF 2010****JUDGMENT:**

1. The appellants/A1 to A4 are questioning their conviction for the offences under Sections 307, 326, 324 r/w 34 IPC, vide judgment in S.C.No.171 of 2009 dated 21.06.2010 passed by the VII Additional Metropolitan Sessions Judge, Hyderabad.

2. Briefly, the case of P.W.1/defacto complainant is that all the appellants are residents of his area. In the year 2007 one Mukhtar (not examined) informed P.W.1 that the appellants forcibly took away his motor cycle, mobile phone and gold ring although he had cleared loan due to 1<sup>st</sup> appellant/A1. A1 and A2 are brothers and A3 and A4 are their cousins. P.W.1 settled the issue in between said Mukhtar and A1. The articles that were allegedly seized from Mukhtar were returned at the instance of P.W.1. Thereafter, on 13.04.2007 between 10.30 p.m and 11.00 p.m, while P.W.1 was near Moin Cycle shop at Talabkatta, all the accused and three others attacked with iron rods, sticks and talwar. A1 attacked with a stick and beat him on the right leg. When he fell down, A1

attacked with sword on the head. A3 attacked P.W.1 with iron rod on left shoulder and other parts of the body. A2 beat P.W.1 with talwar and iron rod. A4 caught hold of P.W.1 when he was attacked by the other accused. Having witnessed the attack, P.W.3 tried to intervene, however, he was also attacked by the appellants and three others. P.Ws.1 and 3 went to Osmania General Hospital for treatment. Complaint was lodged on the very same day and immediately, Section 161 Cr.P.C statements were also recorded.

3. The Investigating Officer, having examined witnesses and effecting seizures which were MO1, wooden stick, MO2 sword and MOs3 and 4 iron rods, filed charge sheet against the appellants.

4. During the course of trial, P.W.1 (eye witness and injured), P.W.2 (eye witness), P.W.3 (eye witness and injured) supported the case of the case of the prosecution. P.Ws.4 and 5 who are witnesses to the scene of offence panchanama, deposed that panchanama and sketch were drafted in their presence by the police. However, P.Ws.6 and 7 who are witnesses to the seizures

MOs.1 to 4 from the accused have turned hostile to the prosecution case.

5. Prosecution examined P.W.8, Doctor, who examined P.W.1 nearly four days after the incident and issued Ex.P10 wound certificate. PW.9 is the Casualty Medical Officer in Osmania General Hospital. He examined both PWs.1 and 3 within four hours of incident and gave Ex.P11, which is injury certificate of P.W.1 and Ex.P12 injury certificate of P.W.3.

6. Learned Sessions Judge, having considered the evidence on record, found that the appellants had in fact inflicted injuries on PW1 and 3, as narrated by them and accordingly convicted the accused.

7. Learned counsel appearing for the accused/appellants would submit that the version narrated by P.Ws.1 to 3 before the Court is totally different from what was stated in their Section 161 Cr.P.C examination. The exaggeration made before the Court was in fact adduced during the course of cross-examination of Investigating Officer (P.W.10). It is highly improbable that P.W.8 examined P.W.1

and found only two injuries, however, P.W.9, Doctor who examined P.W.1 found 8 injuries without any fractures. The wounds did not tally and injuries that are shown as fractures in Ex.P10 were not found in Ex.P11. Admittedly, the witnesses were on inimical terms with the accused. In view of the improvements and discrepancies in their evidence, the accused are entitled to acquittal.

8. On the other hand, learned Assistant Public Prosecutor would submit that the witnesses P.Ws.1 to 3 have narrated in detail, the overt acts of each of the accused. All the accused are known to P.Ws.1 to 3. The evidence clearly discloses that the appellants have attacked PW.1 with deadly weapons and when P.W.3 intervened, he was also assaulted. On the basis of injuries received by P.Ws.1 and 3, the trial Court had correctly come to a conclusion that the offence is one of attempting to commit murder punishable under Sections 307 IPC and also attacking with deadly weapons punishable under Section 326 of IPC.

9. The injuries that were noted initially by P.W.9 are; i)Laceration 7 x .5 cm on the occipital region of head; ii) Laceration 5 x 1 cm in

the mid line of vertex region of skull; iii) Laceration of 7 x 2 cms in the frontal region of skull; iv) laceration 2 x 0.5 cms lateral to right eye; v) Abrasion 0.5 x 0.5 cms on right elbow vi) multiple abrasions on left forearm; vii) abrasion 2 x 1 cms on left shoulder and viii) Swelling 15 x 20 cms on right leg in the calf region.

10. P.W.1 went to a private hospital and P.W.8, Doctor examined him on 17.042007. According to P.W.8, he found fractures of both bones of right leg, fracture of metacarpal bone of the left hand and a sutured wound on the head and the injuries were few days old.

11. Immediately after the attack on P.Ws.1 and 3, they went to Osmania General Hospital and were treated by P.W.9 Doctor. According to him, no fractures were found. However, four days later, P.W.8 examined him and stated that there were fractures of both bones of right leg and sutured wounds on the head. Such discrepancy in the wounds is not explained by the prosecution. Admittedly, when P.W.1 approached P.W.8, treatment was already given. The treatment, according to the prosecution was given by PW.9 who did not state about any fractures. By the time, P.W.8

examined P.W.1, he was already sutured and treatment given for fractures. The prosecution has not placed any evidence to show who was the Doctor who treated or who has given medication and plastered or treated the fracture injuries that were found on P.W.1. In the absence of any explanation for the glaring inconsistencies regarding injuries that were found on P.W.1, there arises any amount of doubt regarding prosecution version about the fractures being received on the date of the alleged assault by the appellants.

12. Even in the evidence of P.Ws.1 and 2, there are several improvements that were made apparently to implicate the appellants. Though it was specifically mentioned that apart from the appellants /A1 to A4, three others were present, no efforts were made to identify the other three persons during investigation. The admitted omissions in the statements of P.Ws.1 and 3 would be relevant. According to the Investigating Officer, the evidence of PW.10 is as follows:

*“It is true that P.W.1 had not stated in Ex.P1 about A1 attacking him with talwar on his head. It is true that P.W.1 had not stated in Ex.P1 that all the accused had forcibly taken Chetak, watch, mobile cell phone and gold ring from Mukhtar.....*



*It is true that P.W.1 had not stated in Ex.P1 about A3 beating him on his shoulder with iron rod. P.W.1 had not stated in Ex.P1 about A2 attacking him with a talwar on his head. P.W.1 had also not stated in Ex.P1 that A4 had caught hold him at the time of attack.*

*P.W.1 had not stated in Ex.P1 about who beat Ghouse and that Ghouse received injury on his right hand. P.W.1 had not stated before me in his 161 Cr.P.C statement that A1 attacked him with a stick and beat him on his right leg, when he fell down, A1 again attacked him with a sword on his head. P.W.1 had not stated in his 161 C.P.C statement that A2 beat him with talwar and iron rod on his head. P.W.1 had not stated in his 161 Cr.P.C statement that A3 attacked him on his head with talwar. P.W.1 had not stated in his 161 Cr.P.C statement that A2 and A3 were armed with talwars. P.W.1 had not stated in his 161 Cr.P.C statement that A1 to A4 beat Mohd. Ghouse. P.W.2 had not stated in his 161 Cr.P.C statement that A1 beat P.W.1 with an iron rod on his right leg and when P.W.1 fell down A1 again attacked him with talwar on his head. P.W.2 had not stated in his 161 Cr.P.C statement that A2 beat P.W.1 with an iron rod on his head and A3 beat P.W.1 with an iron rod on his head. P.W.1, 2 and 3 had not stated in their 161 Cr.P.C statements that they can identify the weapons with which the accused attacked them.*

*P.W.3 had not stated in his 161 Cr.P.C statement that A1 attacked P.W.1 with a stick on his right leg and when fell down, A1 again attacked him with talwar on his head and A2 beat P.W.1 with a stick on the body of P.W.1 and A3 beat P.W.1 with*

*a steel rod. None of the witnesses had spoken about the presence of the electric lights at the place of offence.”*

13. From the above admissions by the Investigating Officer, it is apparent that what all was stated specifically regarding the appellants was totally absent in the earlier complaint and Section 161 Cr.P.C statement. The incident happened in the night and admittedly that there is no mention about any light that would enable identity of the persons. According to P.W.1, there were three others who attacked him and P.W.3. The omissions and the exaggeration made during the course of trial clearly reflects that with an intention to implicate the accused such specific averments were made during trial. The seizure of MOs.1 to 4 was not spoken to by the independent panchas P.Ws.6 and 7. P.W.1 attributes attack with sword by A1 and A2 and one sword was seized during investigation. However the trial Court acquitted the accused under the Arms Act. Apparently, the discrepancies in the statements made during investigation and developments during trial would go to the root of the case and reflect the falsity of witnesses and their attempt to implicate the appellants.

14. At the earliest point of time, the injuries as stated by P.W.9 vide Ex.P11, who examined P.W.1 and issued Ex.P11 certificate did not state as to which injuries were grievous.

15. In **Tomaso Bruno and another v. State of Uttar Pradesh**<sup>1</sup>, the Hon'ble Supreme Court found that improvement at a later stage during trial did not inspire the confidence of the Court in the evidence. Similar observations are also made in the case of **State of Rajasthan v. Rajendra Singh**<sup>2</sup>.

16. Keeping in view the several discrepancies amongst witnesses and improvements during trial, this Court deems it appropriate to set aside the conviction under Section 307 and 326 of IPC. In the said circumstances, benefit of doubt is extended and appellants are acquitted of the said offences.

17. Appeal allowed. Bail bonds stand discharged.

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**K.SURENDER, J**

Date: 04.04.2024  
Note: LR copy to be marked  
B/o.kvs

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<sup>1</sup> (2015) (7) SCC 178

<sup>2</sup> (2009) 11 SCC 106