

Dappili Verma Reddy and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 248 of 1969

(G. K. Mitter, P. Jagmohan Reddy, K. K. Mathew JJ)

04.05.1972

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is from the judgment of the High Court of Andhra Pradesh reversing the judgment of the Additional Sessions Judge of Kurnool in Sessions Case No. 30 of 1968 acquitting the 20 accused in the case.
2. The prosecution case was as follows. Deceased Pedda Venkata Reddy was a rich and influential person of Singaripalli village in Giddalur Taluk. P.Ws. 1 to 7 are his sons and they were living together as members of a joint family. Of his sons, P.W. 6 was a student of the final year M.B.B.S. class and P.W. 7, an advocate practicing in Giddalur. The accused were related to each other and they also belong to Singaripalli village. On the evening of December 29, 1967, P.W. 2 found some buffaloes belonging to A-3 grazing in the horse-gram field belonging to their family. He drove them to the cattle pound. A-2, A-5 and A-13 interfered and P.W. 2 was beaten by A-5. P.W. 2 came and told about this incident to his father and brothers. His father and P.W. 1 went to the House of A-3 and questioned A-5, who is the son of A-3, about his conduct and they returned to their home. At about 6 a.m. on the next day, namely, December 30, 1967, the accused came in a body and stationed themselves before the house of the deceased crying out "Kobali". The deceased and his sons were attending to their daily duties. Seeing the accused coming in a body, the deceased asked them why they were coming out in a threatening manner. Then A-4, A-13, A-17, and A-18 came near the deceased saying that unless he was done away with, their troubles would not end. Thereafter, A-4 dealt a blow on the head of the deceased with a cart peg. The deceased bent his head in pain whereupon A-13 dealt a blow on his head with a chetny pounder. The deceased fell down when he received the second blow. When their father fell down, the sons of the deceased came to out and each one of them was beaten by some or the other of the accused. A-3 and A-5 beat P.W. 1 on his head with a cart peg; A-14 and A-15 attacked P.W. 2 and A-15 gave a blow on the head of P.W. 2 with a chetny pounder, A-1 and A-2 dealt blows on the head of P.W. 3, A-11 and A-20 beat P.W. 4 on the head and right shoulder, A-12 beat P.W. 5 on the head and on the left elbow with a cart peg. P. Ws. 6 and 7 were injured by the pelting of stones by the women accused. Hearing the commotion, the farm servants of the deceased came on the scene and drove away the accused.
3. After the accused left the scene, the deceased was taken inside the house. He was unconscious at the time. A passing lorry was hired and all the injured were taken to the Government hospital at Giddalur for treatment. Giddalur is about 30 miles away from Singaripalli. P.W. 18, the medical officer in charge of the hospital examined the injuries on the deceased and P. Ws. 1 to 7. P.W. 18 sent an intimation to the police about the "accident and injuries". He also intimated the Magistrate at

11.15 a.m. that the condition of the deceased was serious and that a dying declaration should be recorded. The Magistrate came to the hospital but he found that the deceased was unconscious. The Head Constable of Giddalur police station, who received the intimation, came to the hospital, and recorded the statements of P.Ws. 1 to 7. They are exhibits P-1, P-3 and P-8. The statements were despatched to Komarol police station which had jurisdiction over Singaripalli. Before the statements were received at Komarol police station, A-4 and 7 others residing in Singaripalli village came with injuries on their persons to the police station at Komarol at 4.30 p.m. on December 30, 1967, and P.W. 27, the Sub-Inspector, recorded the statement of A-4 and arranged to send all the injured persons to Giddalur. In his statement (exhibit P-50), A-4 said that the deceased and his son and others came to the house of A-3 and beat him, A-3, A-12, A-13, A-15, A-17, and 2 others. It was after recording the statement of A-4 and sending the injured to the hospital at Giddalur that P.W. 27 left for Singaripalli. He reached Singaripalli at 6.30 p.m. There he came to know about the injuries sustained by the deceased and his sons and they had been taken to Giddalur. He, therefore, proceeded to Giddalur hospital. He found that the condition of the deceased was very serious. He recorded the statement of P.W. 1 (exhibit P-2) and proceeded with the investigation. Venkata Reddy, who was removed to the general hospital at Kurnool, died there on January 1, 1968.

4. At the trial, the plea of the accused was one denial. Their case was that they were attacked by the deceased and his sons and the injuries found on their persons were caused during the course of the attack by them.

5. The session judge found that there was great delay in giving the first information, that the prosecution witnesses did not speak the whole truth, that the occurrence took place before the house of A-3, that the accused were really attacked by the deceased and his sons, and he acquitted the accused.

6. The High Court, in appeal by the State, came to the conclusion that there was no reason to disbelieve the testimony of P.Ws. 1 to 12 and that the prosecution case was substantially true. The Court, therefore, convicted A-13 and A-15 of offence under Section 148 and sentenced each of them to R.I. for 3 years, convicted A-1 to 5, 11, 12, 14, 17 and 18 of offence under Section 147 and sentenced each of them to undergo R.I. for a period of 2 years, convicted A-4 and A-13 of offence under Section 302 and sentenced each of them to suffer imprisonment for life, convicted accused 1 to 3, A-5, A-11, A-12, A-14, A-15, A-17 and A-18 under Section 325, read with Section 149 and sentenced each of them to undergo R.I. for a period of 3 years and further convicted A-1 to 3, A-5, A-11, A-12, A-14, A-15, A-17 and A-18 for offence under Section 323 for the injuries caused to the witnesses and sentenced each of them to suffer R.I. for a period of one year. The sentences awarded were directed to run concurrently. A-6 to 10, 16, 19 and 20 were acquitted.

7. There can be no dispute that at 6 a.m. on December 30, 1967, the incident took place. The earliest version of the prosecution case is to be found in exhibit P-1, the statement given by P.W. 1. It was recorded by P.W. 24 at about 12 noon. The statements of P.W. 2 to 7 in exhibits P-3 to P-8 were recorded by P.W. 24 between 12 noon and 1 p.m. P.W. 1, in his evidence before the Court spoke to the incident on the previous day and stated that on the morning of the day of the occurrence, all the accused came to their house shouting "kobali" and when his father reproached the accused for behaving in a high-handed manner, A-4 said that their troubles could be over only by doing away with the deceased. He further said that A-4 and A-13 dealt blows on the head of the deceased with a cart peg and a pastle respectively, that A-1 and A-2 beat P.W. 3 that A-14 and A-15 beat P.W. 2, that A-11 and A-20 beat P.W. 4, that A-12 beat P.W. 5 and that A-3 and A-5 beat himself and that, on hearing the commotion, their farm servants came and drove away the accused. Substantially the

same version was given by P.Ws. 2 to 7. The evidence of P.W. 1 is corroborated by his previous statement recorded in exhibit P-1. Learned Counsel for the appellant contended that in exhibit P-1, P.W. 1 had stated that A-4, A-13, A-17 and A-18 beat his father but that in his evidence before the Sessions Court, he improved upon the statement by saying that although the four accused came upon his father, only two of them, namely, A-4 and A-13 dealt blows on the head of his father and that this improvement was deliberately made with the purpose of making his evidence tally with the medical evidence that the deceased sustained only two injuries on the head. Counsel also said that in exhibit P-1, P.W. 1 had stated that A-1, A-2, A-14 and A-15 dealt blows on his brother P.W. 3, but that in his evidence, he said that A-1 and A-2 alone beat P.W. 3 and since there is material discrepancy between the statement of P.W. 1 in exhibit P-1 and his evidence in Court, he cannot be believed when he said in his evidence that it was A-4 and A-13 who dealt the blows on the head of the deceased. The High Court did not attach much weight to these discrepancies between his testimony in Court and his statement in exhibit P-1. We are in agreement with the High Court in thinking that in spite of these discrepancies between his statement in exhibit P-1 and his evidence before the Court, the evidence of P.W. 1 is substantially true and was rightly relied on by the High Court. P.Ws. 2 to 7, in their depositions also stated that although A-4, A-13, A-17 and A-18 came upon their father, only A-4 and A-13 dealt blows on his head. They also spoke to attacks made by the individual accused on them. It is no doubt true that there were minor discrepancies of these witnesses in Court and their statements to P.W. 24 (exhibits P-3 to P-8) at the Giddalur hospital. But these discrepancies, according to the High Court, were not serious enough to discredit the truth in broad outline of the prosecution case. Apart from the evidence of P.Ws. 1 to 7, there is the evidence of P.Ws. 8 to 12 to show that it was A-4 and A-13 who dealt the blows on the head of the deceased. The learned Sessions judge did not choose to rely upon the testimony of P.Ws. 8 to 12 for the reason that they were either related to the deceased or interested in the prosecution. But there was not the slightest suggestion to any one of these witnesses while they were in the witness stand that any one of them was related to the deceased; nor is there any evidence worth the name to show that they were interested in the deceased or P.Ws. 1 to 7. The evidence of P.Ws. 8 to 10 and P.W. 12 is clear that they saw the accused going in a body on the morning of December 30, 1967, and stationed themselves before the house of the deceased shouting "Kobali" and that A-4 and A-13 beat on the head of the deceased. They do not speak in detail to the individual acts of the other accused, but all of them said that the farm servants of the deceased, on hearing the commotion, came and drove away the accused. The High Court relied on the evidence of these witnesses also to come to the conclusion that the prosecution case was substantially true.

8. It was argued on behalf of the appellant that the occurrence must have taken place in front of the house of A-3 and not in front of the house of the deceased and that the prosecution case that it took place in front of the house of the deceased cannot be accepted. The High Court has carefully examined this question and we think the finding of the High Court in this regard is consistent with the proved circumstances in the case. P.W. 27, the Sub-Inspector has stated in his evidence that many of the accused lived in different parts of the village. How then was it possible for the deceased and his party to cause injuries to the accused unless it be assumed that all the accused who were injured gathered together in front of the house of A-3 at that early hour for some purpose? The preponderance of probability was that the accused gathered together with a common object and came in a body to the house of the deceased. Counsel for the appellant submitted that if the occurrence took place in front of the house of the deceased, there would have been some marks or dents on the doors, windows or walls of the house of the deceased as it is the prosecution case that the women accused had stones with them and they pelted the stones at P.Ws. 1 to 7. The fact that no marks or dents were found on the walls, doors or windows of the house of the deceased is not a

strong circumstance to show that the occurrence did not take place in front of the house of the deceased. We do not also think the fact that P.W. 27 found stones scattered in front of the house of the deceased as a circumstance of much significance either to prove that the occurrence took place in front of the house of the deceased. The evidence of P.Ws. 8 to 12, the independent witnesses, can only lead to the conclusion that the occurrence took place in front of the house of the deceased. That conclusion is fortified by the circumstance already adverted to.

9. Counsel for the appellant contended that the prosecution offered no explanation for the injuries found on the persons of the accused. P.W. 18 has examined the accused on the date of the occurrence and in the wound certificates issued by him and in his evidence, he has stated the nature of the injuries sustained by the accused. They are simple injuries. While P.Ws. 1 to 6 suffered injuries on their heads, none of the accused seems to have sustained any injury on the head. P.Ws. 8 to 10, as already stated, deposed that the farm servants of the deceased, on hearing the commotion, came and drove away the accused. The suggestion was that it was the farm servants who must have inflicted these injuries on the accused. Although P.Ws. 8 to 10 stated in their evidence that they told P.W. 27, the Sub-Inspector, about the accused being driven by the farm servants, P.W. 27 did not say that any of these witnesses told him that the farm servants came and drove away the accused. The High Court thought that the injuries on the persons of the accused must have been received when the deceased and his sons were attempting to defend themselves, and that P.Ws. 1 to 7 were unwilling to state that some of them beat the accused in defending themselves for fear that such statements might be used against them in the counter case. When once it is found that the accused came in a body and stationed themselves in front of the house of the deceased and shouted "Kobali", it seems clear that they were the aggressors and the suggestion made by the High Court that some of the sons of the deceased might have caused injuries in their attempt to defend themselves cannot be ruled out.

10. It was argued on behalf of the appellant that High Court did not keep in view the principles which should govern the appreciation of evidence in an appeal from a judgment of acquittal. In *Sheo Swarup and Others v. The King Emperor*, (61 IA 388, 404 : AIR 1934 PC 227) the Privy Council has laid down the circumstances which should be kept in view in dealing with an appeal from an order of acquittal. Lord Russell of Killowen made the following observations :

"Sections 417, 418 and 423 of the Code give the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon the power, unless it be found expressly stated in the Code. But in exercising the power "conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."

We are satisfied that the High Court has kept these circumstances in view while appreciating the evidence in the case.

11. We do not think that there is any substance in the argument of the counsel for the appellants that

there is no evidence to show that which of the blows dealt by A-4 and A-13 on the head of the deceased proved fatal. The injuries inflicted by A-4 and A-13, according to the post-mortem examination, were :

"(1) Lacerated injury on right parietal one cm. middle measuring 5.5 cm. x 0.5 cm. x skin deep oblique on direction - wound was stitched the margins were abraded - some evidence of healing seen.

(2) Lacerated injury on the left parietal 2.5 cm. from the mid-line measuring 3 cm. x 0.5 cm. x up to bone oblique in direction it was stitched margin were abraded - some evidence of healing was seen."

Corresponding to these external injuries, the following internal injuries were found :

"(1) Extra-dural haematoma both temporal lobes measuring 3 cm. x 2 cm. x 2 cm. anterior posterior in direction.

(2) Sub-dural haematoms over right temporal measuring 6 cm. x 3 cm. anterior posterior.

(3) Sub-dural haematoma over entire left hemisphere 4 mm. deep. The clot show evidence of early organisation.

(4) Contusion of left temporal 4 cm. x 2 cm. anterior posterior.

(5) Fracture of right middle cranial fossa extending to parietal upwards 10 cm. long and of the fissured type.

(6) Fracture of left-parietal close to anterior suture line across 5 cm. long of hisaure type."

According to the High Court it was a legitimate inference from the nature of injuries that each of these was sufficient, in the ordinary course of nature, to cause death. We are not satisfied that the inference made by the High Court was wrong. Nor are we satisfied that there is any infirmity in the appreciation of the evidence the High Court as regards the individual acts committed by the accused towards P.Ws. 2 to 7.

12. We confirm the convictions and sentences and dismiss the appeal. The accused, if on bail, will surrender themselves to their bail bonds.

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