

Anne Nageswara Rao

Vs

Public Prosecutor, Andhra Pradesh

Criminal Appeal No. 81 of 1971

(A. Alagiriswami, N. L. Untwalia JJ)

14.03.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal against the judgment of the Andhra Pradesh High Court allowing an appeal by the State against the judgment of the learned Sessions Judge of Krishna acquitting the appellant and convicting him for an offence under Section 302 I.P.C.
2. The prosecution case was that on April 2, 1969 at 4 p.m. the deceased and PWs 1 and 2 left their village and were going to Telaprolu for seeing a festival there and they were carrying some vegetables with them on 'kavadies' to sell there PWs 1 and 2 were going in front while the deceased was coming behind. They saw the appellant coming on a cycle and passing them and hearing a thud turned back and saw the appellant stabbing the deceased. This was at about 5 o'clock. They sent word through some villagers to the members of the family of the deceased about the incident and as nobody turned up till 9 p.m. PW 1 went to Telaprolu and informed the Circle Inspector of Police. The FIR was registered at 10 o'clock and the Inspector and two policemen reached the scene of occurrence at 11.30 p.m. The learned Sessions Judge after considering all the evidence acquitted the accused but the High Court on appeal by the State set aside the judgment of the Sessions Judge and convicted the appellant.
3. The PWs 1 and 2 are the only two witnesses who speak to the occurrence. There was an incident on April 1, 1969 in which there was a quarrel between one Anne Koteswara Rao and the mother of the deceased and some others belonging to Anne Koteswara Rao's party came there and beat the brother of the deceased. One Nakka Venkateswara Rao. PW 5, was said to have interfered and been beaten by the appellant and others. In the meantime the deceased who came there also abused the appellant and others of his party. This is said to be the motive for the murder.
4. After the incident PWs 1 and 2 waited at the spot till 9 o'clock and then PW 1 went and made a report about the incident to the police leaving PW 2 near the body. But according to PW 3, the mother of the deceased, when she went to the place of occurrence there was nobody there. According to PW 4, the brother of the deceased, he reached the scene of offence after having come to know about it at 8-9 p.m. and when he went there only the police constables were there. PW 5 who came to know about the occurrence at 8 p.m. went along with PWs 3 and 4 and he saw only the police there. Thus none of the three witnesses speak to the presence of PW 2. His presence there not being established his presence at the time of occurrence becomes highly doubtful. We also find it difficult to believe that the occurrence having taken place at 5 o'clock PW 1 would have waited till 9 o'clock before he went and reported to the police. The place where the occurrence took place

was the road for people from ten or twelve villages to go to Telaprolu and many people were passing along and he could very well have asked some of them to go and tell the police or immediately after the occurrence he could have asked PW 2, if it is true that he was there, to go and report to the police or ask him to stay there and himself gone to the police. If PW 1 had sent word to the members of the family of the deceased at about 5 o'clock it cannot be that they did not reach the scene of occurrence till 11.30 p.m. because it is only by that time that the police were at the scene of occurrence.

5. We are not also able to persuade ourselves that there is sufficient motive for the appellant to murder the deceased. The deceased was not the only person involved in the quarrel on April 1, on the opposite side and there does not seem to be any particular reason why the appellant should have taken into his head to murder him. The appellant was not the person who was directly involved in the quarrel on April 1. In the circumstances we are not able to agree that the presence of the three 'kavadies' at the scene of occurrence and the fact that the prosecution story is substantially the same as was set out in the FIR can be said to establish beyond reasonable doubt that the deceased and PWs 1 and 2 were going to Telaprolu together and the incident took place when they were so going.

6. The evidence of PWs 1 and 2 shows that they and the deceased had never before gone together to sell vegetables. If the occurrence took place at 5 p.m. alleged by PWs 1 and 2 the report to the police at 10 p.m. would show that the whole story as found in the FIR had been thought up by that time. The arrival of PWs 3 to 5 at the scene of occurrence after 11.30 p.m. would seem to show that they must have heard of the murder at 10 p.m. or later, roughly the same time as the police heard about it. It may well be that finding the dead body at 9 p.m. the matter was reported to the police and PWs 3 and 4 were also informed about it. PW 1 had at least some motive to falsely implicate the appellant. In the circumstances we think it unsafe to rely upon the sole testimony of PW 1 as we have held that the presence of PW 2 cannot at all be said to have been established.

7. We do not therefore think that the High Court was justified in interfering with the well considered judgment of the learned Sessions Judge. The utmost that can be said is that two views are possible and it is not therefore a case where the High Court was justified in setting aside an order of acquittal and convicting the appellant. Indeed we would say that the balance of probabilities is slightly in favour of the appellant. This is certainly not a case where the guilt of the appellant could be said to have been established beyond reasonable doubt.

8. The appeal is allowed. The judgment of the High Court is set aside. The appellant shall be set at liberty forthwith.

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