

Ediga Sanjanna and Others

Vs

The State of Andhra Pradesh

Criminal Appeal No. 175 of 1971

(A. C. Gupta, Y. V. Chandrachud JJ)

10.10.1975

JUDGMENT

GUPTA, J. -

1. The appellants were acquitted by the Additional Sessions Judge, Kurnool, of the charges framed against them under Section 148 and Section 302 of the Indian Penal Code, alternatively under Section 149 read with Section 302 of Indian Penal Code for the murder of one Chinna Sidda Reddy on August 1, 1968. The High Court of Andhra Pradesh at Hyderabad on appeal preferred by the Public Prosecutor of Andhra Pradesh set aside the order of acquittal and convicted the appellants under Section 302 read with Section 149 of the Indian Penal Code and sentenced each of them to imprisonment for life. They were also convicted under Section 148 of the Indian Penal Code and each of them was sentenced to suffer rigorous imprisonment for two years. The sentences were directed to run concurrently. In this appeal preferred under Section 2 of the Supreme Court (Enlargement of Criminal Jurisdiction) Act, 1970 the correctness of the High Court's order setting aside the acquittal is under challenge.

2. Accused Nos. 1 to 9 are residents of village Putlur and accused No. 10 used to reside in a neighbouring village Cherukulapadu, about two and a half miles from Putlur. For over twenty years these villages have been the scene of bitter rivalry between two communities, 'Kapus' and 'Upparas'. One Chinna Thimmanna was the leader of the Upparas until 1956 when he was murdered. Prosecution witnesses Nos. 1, 5, 6 and several others were charged with the murder of the said Thimmanna but they were all acquitted. This was followed by several criminal cases and proceedings under Section 107 of the Code of Criminal Procedure involving members of both the warring factions. After the murder of Thimmanna accused Nos. 3 and 4 became the leaders of the 'Upparas'. The leader of the Kapus was Chinna Sidda Reddy who was murdered on August 1, 1968. A fortnight before the occurrence, there was an altercation between accused No. 4 on one side and PW 6 and Chinna Sidda Reddy on the other, over the purchase of certain lands.

3. The prosecution account of the occurrence on August 1, 1968 is as follows. Chinna Sidda Reddy and his brother PW 1 started out from their houses just before midday to go to another village called Dhone. After they had proceeded some distance along the road leading to village Cherukulapadu en route to Dhone, they overtook PWs 2 and 3 who were going to Cherukulapadu. The road ran south to north. Venkatappa, father of accused No. 7, had his house on this road. All the accused persons came out of Venkatappa's house variously armed and rushed towards PW 1 and the deceased as soon as they came near the house. Out of fright PW 1 ran into the house of PW 7 which was to the west of the road, Venkatappa's house was on the eastern side. The deceased turned back and ran but was chased by the accused and caught when he was between two bullock carts parked on either side of

the road. What happened then has been described by PWs 1, 2, 3, 4, 5 and 6. PW 1 saw the occurrence from behind the fence made of dried date palm leaves of the houses of PW 7 which was about 60 to 70 feet away from the scene occurrence. PWs 2 and 3 who were following the deceased and PW 1 saw the occurrence standing near a tree by the roadside from distance of 50 or 60 feet. PW 4 who had his house nearby saw the incident partly sitting at the wall of a neighbour's house. PWs 5 and 6 witnessed the happening standing near the house of one Vadde Giddaiah.

4. The substance of the evidence of PWs 1, 2, 3, 5 and 6 is as follows. All the accused persons rushed towards the deceased shouting something like "Where would you go? This is your last day". Accused Nos. 1 to 5 were armed with sickles, accused Nos. 6 to 9 with spears, and accused No. 10 with a battle axe. Accused No. 10 initiated the attack when the deceased was overpowered between the two stationary bullock carts by giving him a blow on the head with his battle axe and he was followed by accused Nos. 1 to 3 who hit him with their sickles. The deceased then fell down when all the accused surrounded him and hit indiscriminately with the weapons they were carrying. After some time accused No. 4 said that the man was dead and asked the others to leave the place. All the accused then ran along the road towards the south with their weapons and clothes bloodstained.

5. The evidence of PW 4 is that on August 1, 1968 he was suffering from fever. At about midday feeling a little better he came out of his house to have a wash and was sitting near the wall of his neighbour's house when he saw 10 or 11 people emerging from Venkatappa's house with weapons in their hands. Of these 10 or 11 persons he could identify accused Nos. 1, 2, 4, 5, 6 and 9. Seeing the accused rushing towards the deceased, he went inside his house and bolted the door.

6. Post-mortem examination revealed 28 marks of external injury on the body of the deceased including abrasions and contusions. The stab injuries and the cut and incised wounds on the body are consistent with the account of assault given by the prosecution witnesses. Injury Nos. 4, 14, 18, 20, 23, 24, 26 and 27 show that there were abrasions on the following parts of the body :

- (i) four on the front upper part of the shoulder and chest wall.
- (ii) ten on the back of the right side of the chest,
- (iii) two on the front of right thigh,
- (iv) one in the centre of the right side of the abdomen,
- (v) one on the outer side of the right hand palm,
- (vi) one on the back of the left forearm,
- (vii) multiple abrasions on the outer side of the thigh starting from the hip bone upto the knee, and
- (viii) one big abrasions on the back of the left leg.

There were also two contusions, one on the lower part of the left side of the abdomen, and the other on the lower part of the right side of the chest wall. It appears further that except the little finger, the four other fingers of the right hand were found cut off, the thumb was just sticking to the palm and three other were completely severed and missing.

7. The Additional Sessions Judge acquitted the accused giving them the benefit of doubt. This is how he sums up his view of the case :

.... on a consideration of the entire evidence, probabilities and circumstances, it is clear to my mind that on account of the prevailing factions in the village, all these ten accused before the court have been implicated in this case, though some 4 or 5 persons might have committed this offence at some earlier point of time ..... The evidence of PWs 1, 5, 6 is not only partisan but it bristles with material contradictions. PWs 2 to 4 are trumped up witnesses for the occasion. The accused emerging out of Venkatappa's house as a body armed with weapons is clear concoction. It is clearly false that the occurrence took place when the deceased and PW 1 were proceeding together to go to Veldurti or Dhone. It happened under different circumstances ..... The presence of A-3 clearly appears to be doubtful. So also the presence of A-10 appears to be doubtful in the absence of reliable and trustworthy testimony. It is difficult to fix the guilt on any one of the other eight accused, for the occurrence took place not as the prosecution would now have it, but had happened under different circumstances. All the accused are therefore entitled to the benefit of doubt. It cannot be said with any certainty that all these ten accused or some of them were members of the unlawful assembly at the house of Uppari Venkatappa .....

8. The Additional Sessions Judge mentioned several circumstances which remain unexplained in the prosecution version of the incident. More important of these circumstances are these. The three severed fingers of the deceased were not traced at the alleged place of occurrence in spite of a search and there is no explanation how the fingers could be missing though there were witnesses who were present all through the occurrence. It also remains unexplained how the accused could get prior intimation that the deceased and PW 1 would pass that way at that time so that all the accused had time together in Venkatappa's house ready with arms waiting for the two to arrive. The multiple abrasions and contusions on the body of the deceased also seemed to the Additional Sessions Judge inconsistent with the prosecution case according to which the deceased was assaulted by the accused with the weapons mentioned above, and the occurrence was all over in a very short time. The Additional Sessions Judge further doubted if it was physically possible for ten people to surround and assault the victim in the manner alleged within the four feet space between the two bullock carts where the occurrence is stated to have taken place.

9. The Additional Sessions Judge declined to rely on the alleged eyewitnesses because of the contradictions and improbabilities in their evidence. He also took into consideration the fact that three of them, PWs 1, 5 and 6 were partisan witnesses. It is true that this fact alone, that PWs 1, 5 and 6 belonged to the party of which the deceased was the leader, would not justify discarding their evidence, but their evidence has to be examined with caution. The High Court also accepted their evidence only because it thought that PWs 2, 3 and 4 were independent witnesses and that their evidence corroborated the account given by PWs 1, 5 and 6. The Additional Sessions Judge regarded PWs 2, 3 as "trumped up" witnesses and pointed out a large number of contradictions in their evidence. Both these witnesses belonged to village Cherukulapadu but they happened to be present at Putlur on the day of occurrence, the reason given being that PW 3 had gone to see one Showker Sive Reddy of Putlur to secure a loan of Rs. 50. The Additional Sessions Judge expressed some surprise that PW 3 expected to get an advance from someone who did not belong to his village, especially when PW had nothing to offer as security for the loan. However, admittedly both of them were in Putlur on that day. Among the many contradictions in their evidence pointed out by the Additional Sessions Judge, a few may be mentioned here. Before the police PW 3 appears to have said that the accused surrounded that deceased under a javvi tree in front of one Ramanna's house; in the court of sessions however the evidence of both PW 2 and PW 3 was that the victim

was surrounded when he had reached the spot between the two bullock carts which was to the south of the tree. What is perhaps more important is that both PWs 2 and 3 had stated before the police that sometime after the assault started, accused No. 4 told the other accused that their victim was dead and they should get away from the place and, further, that all the accused then went away towards the village with their clothes and weapons blood-stained. In the Sessions Court their evidence was that they had left the place out of fear while the assault was still going on. One reason which weighed with the High Court in accepting the evidence of PWs 2 and 3 is that their names find a place in the report, Ext. P 1 which was given within an hour after the occurrence. According to the High Court these two witnesses belonged to village Cherukulapadu which was two and a half miles away from Putlur and

if really they were not present at the time of occurrence, it would be difficult to conceive that they could have been sent for from Cherukulapadu and consulted and a story was woven out within that on hour giving them the role of eyewitnesses. There was no time for any such consultation .....

But admittedly both PWs 2 and 3 had come to Putlur and the assumption that they had gone back to their own village after the occurrence is based on their evidence; if this evidence is not found acceptable then the basis of the assumption is gone. The Sessions Judge did not rely on PWs 2 and 3 for the reasons we have referred to above. The High Court does not appear to have considered the material discrepancies between the earlier statements of these two witnesses and their story in the Sessions Court. The difference between the earlier version that they had seen the accused persons leaving the place with bloodstained clothes and weapons after the assault and their evidence in the Sessions Court that they left the place when the assault was going on, is especially difficult to explain. A sudden loss of memory on the part of both the witnesses is not an acceptable explanation, at least the Sessions Judge did not think it so. Having regard to this and other contradictions in the evidence of PWs 2 and 3, it cannot be said that it was altogether unreasonable of the Additional Sessions Judge not to rely on these two witnesses.

10. As regards PW 4 the High Court also noted the contradictions between his statement to the police and his story in court. In court his evidence was that he could identify only six of the accused persons namely, 1, 2, 3, 4, 5, 6 and 9. Before the police however he did not implicate accused No. 1 but mentioned the name of accused No. 3 as one of the assailants; in the court he did not name accused No. 3. He also told the police that he had seen the assault on the deceased, but in court he said that after he saw the deceased surrounded by the accused he fled inside his own house. The High Court found that evidence of this witness acceptable only to the extent that he was suffering from fever and has come out from his house at about midday to wash his face when he saw the deceased and PW 1 and also PWs 2 and 3 on the road and some of the accused persons coming out of the house of Venkatappa, father of accused No. 7, and that on seeing this he ran back into his house out of fear and had not seen the actual attack on the deceased. We doubt if the inconsistencies pointed out by the trial Court in the evidence of this witness could be trusted aside in this manner. If his story before the police was false, there must be very strong reasons for accepting his version in court as true. No such reason is mentioned in the judgment of the High Court, and if the trial Court found the witness unreliable, it was a perfectly reasonable view to take.

11. We do not consider it necessary to refer to the various discrepancies and contradictions in the evidence of PWs 1, 5 and 6 mentioned in the judgment of the trial Court. In view of the fact that they belonged to the group led by the deceased, the High Court also felt that their evidence would be acceptable only if it was corroborated by independent evidence. The High Court thought that PWs 2, 3 and 4 were reliable independent witnesses. We have indicated several material

discrepancies in the evidence of these witnesses which to the trial Court appeared serious but the High Court did not consider them of any importance. The High Court finding these witnesses reliable may be a possible point of view, but the view taken by the trial Court on a detailed examination of their evidence cannot also be called unreasonable. We have referred above to some of the circumstances which according to the trial Court remain unexplained if the prosecution version of the incident is accepted as true; the High Court does not appear to have taken note of these circumstances except that as regards the abrasions it suggested that they could have been caused by "coming into contact with a hard object like the wheels of the carts". We doubt if this theory could account for the abrasions all over the body of the deceased, keeping in mind the manner of assault described by the prosecution witnesses. In view of the unsatisfactory nature of the oral evidence, these circumstances acquire added importance and call for an explanation, but no explanation is available. The Additional Sessions Judge also observed that in faction cases, the tendency is to implicate in one sweep as many as possible, he held that the incident could not have taken place in the manner alleged, and doubted that all the accused took part in it. He felt that it was unsafe to convict any of the accused on the evidence on record and accordingly acquitted all of them. Another view of the matter might also be possible but the view taken by the trial Court is certainly not perverse or arbitrary.

12. The powers of the High Court in an appeal against an order of acquittal are now well-settled. In *Sethu Madhavan Nair v. State of Kerala* ((1975) 3 SCC 150 : 1974 SCC (Cri) 774), this Court stated the law as follows : [SCC pp. 155-156 : SCC (CRI) pp. 779-780, para 14]

.... the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the code, but in exercising the power conferred by the Code and before reaching its conclusion upon facts the High Court should give proper weight and consideration to such matters as (1) the view 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 wakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable 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. The High Court should also take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court. It would follow as a corollary from that that if the view taken by the trial Court in acquitting the accused is not unreasonable, the occasions for the reversal of that view would not arise.

13. Applying this principle to the case before us, we find that the High Court had no valid ground for reversing the order of acquittal passed by the trial Court. The reason given by the trial Court for the findings it recorded have not all be considered by the High Court, and the reasons seem to be cogent and convincing. Even if the High Court was inclined to take a different view on the evidence, this was not a sufficient ground for setting aside the order of acquittal, the view taken by the trial Court being also a possible view. Accordingly we allow the appeal and set aside the judgment of the High Court, restore the order of acquittal passed by the trial Court, and direct the appellants to be set at liberty.

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