

Boya Ganganna and Another

Vs

The State of Andhra Pradesh

Criminal Appeal No. 157 of 1971

(Bhagwati, J.)

07.11.1975

JUDGMENT

BHAGWATI, J. -

1. Accused Nos. 2 and 3, who are appellants before us, were tried along with accused Nos. 1 and 4 to 6 for various offences under Sections 147, 148, 302 read with Section 149 or Section 34 and Section 326 read with Section 149 or Section 34 of the Indian Penal Code. The learned Sessions Judge, who tried the case acquitted all the six accused, including accused Nos. 2 and 3. But on appeal by the State, the High Court reversed the acquittal and convicted and sentenced them to various terms of imprisonment. So far as accused Nos. 2 and 3 were concerned, they were convicted under Section 148 and Section 302 and each of them was sentenced to suffer rigorous imprisonment for two years for the former offence and imprisonment for life for the latter. Since the acquittal of accused Nos. 2 and 3 was reversed and they were convicted and sentenced to suffer imprisonment for life, they became entitled to appeal to this Court under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and they accordingly preferred the present appeal.

2. The principal charge against all the six accused was that they formed an unlawful assembly and in pursuance of its common object, accused Nos. 2 and 3 stabbed one Chinna Pullanna (hereinafter referred to as the deceased) and intentionally caused his death and accused No. 1 caused simple injuries to PW 1. The deceased was a brother of accused No. 1. There were three under brothers of their's namely, Pakirappa, Pedda Pullanna and Chinna Peddanna. PW 1 was the wife of the deceased; PW 2 was the wife of Chinna Peddanna and daughter of PW 5. PW 3 was the wife of Pakirappa whose son Nettikallu wa.m.rried to the granddaughter of PW 5 : PW 4 was Pedda Pullanna the brother of the deceased and accused No. 1 and PW 5 was the daughter of the elder brother of the father of the deceased and accused No. 1. Accused Nos. 2 and 3 were the sons of accused No. 1 accused No. 4 was brother-in-law of accused No. 2. Accused No. 2 had no house of his own and, therefore, the deceased had permitted him to occupy his house about three years before the date of the incident. It appears that sometime thereafter accused No. 2 got a gift deed of the house executed by the deceased in his favour. When PW 1 came to know about this, she persuaded the deceased to revoke the gift deed which was executed in favour of accused No. 2 and to execute a new gift deed in favour of her and her two daughters. This, according to the prosecution, strained the relations between accused Nos. 1 and 2 and 3 on the one hand and the deceased and his wife PW 1 on the other and led to friction between them on various occasions.

3. The prosecution case has that on November 16, 1968 at about 9.30 a.m. all the six accused, including accused Nos. 2, and 3, encountered the deceased as he was going along the lane from his

house to the main road which leads from Bellary to Gooty. This lane is about ten feet wide and on the western side of the lane are situated inter alia the houses of the deceased, accused No. 2 and one Chennayya. The house of accused No. 2 is to the south of the house of the deceased and further south is the house of Chennayya. On seeing the deceased, the first accused deliberately collided against him and accused Nos. 1 to 3 dragged him into the house of accused No. 2 which was situated in the lane. Accused Nos. 4 to 6 followed them to the house of accused No. 2 and kept a vigil outside while accused Nos. 1 to 3 forcibly pushed the deceased into the house and started bearing him in the cattle manger which occupied a part of the house. PW 1 went to the rescue of her husband, but he was hit by the first accused on the forehead with a brass chembu and then she raised her hands to ward off the blows, her bangles were broken and she sustained bleeding injuries on her hand. Meanwhile the deceased managed to escape from the clutches of accused Nos. 1 to 3 and ran out of the house, but accused Nos. 4 to 6 also were waiting outside, caught hold of him and prevented him from escaping. Accused Nos. 1 to 3 also came out of the house and while the first accused held the hair of PW 1, accused Nos. 2 and 3 took out their daggers and accused No. 2 stabbed the deceased in the chest and accused No. 3 gave two stab injuries, one below the neck and the other on the back. Accused Nos. 4 to 6 thereafter ran away, while accused Nos. 1 to 3 went back into the house of accused No. 2. The deceased staggered a few steps and entered the house of Chennayya which was a short distance towards south of the house of accused No. 2 and fell there and died. It was in respect of this incident that the six accused, including accused Nos. 2 and 3, were prosecuted and though they were acquitted by the learned Sessions Judge, their acquittal was reversed by the High Court and so far as accused Nos. 2 and 3 were concerned, they were convicted under Section 302 and sentenced to suffer rigorous imprisonment for life.

4. The High Court relied on the evidence of PW 1 to PW 5 and, on the strength of this evidence, held that accused Nos. 2 and 3 had stabbed the deceased with daggers and intentionally caused his death. We have carefully gone through the evidence of these witnesses and we do not see any reason to interfere with the appreciation of their evidence by the High Court. There can be no doubt that PW 1, the wife of the deceased, was present when the incident took place. She admittedly received injuries and that clearly establishes her presence at the scene of the offence. She must then have certainly known as to who were the assailants of her husband and if that be so, it is difficult to conceive of any reason as to why she should have tried to screen the real offenders and falsely implicated all the six accused. She had no reason to be inimical against accused No. 2 because she had succeeded in persuading her husband to revoke the gift deed in favour of accused No. 2 but, even if it be granted that she bore ill-will against accused No. 2 there is no reason why she should have falsely implicated the other accused. Moreover, the recovery of her broken bangles from the house of accused No. 2 clearly supports her story that when she went inside the house of accused No. 2 to rescue her husband, she was hit by the first accused with a brass chembu and as a result of the blow given by the first accused her bangles were broken. The medical evidence also lends credence to her version that as a result of a blow or two given by the first accused with a brass chembu she sustained injuries on her head. The defence version was that when the deceased and PW 1 tried to evict accused No. 2 from the house by force by throwing out his household articles, accused No. 2 ran out of the house and the deceased and PW 1 chased him into the house Chennayya and there they were followed by accused Nos. 1 and 3 and accused No. 3, fearing that the deceased would stab accused No. 2, caught the deceased by his waist and in the process both fell down and the dagger held by the deceased scratched the nose and left thumb of accused No. 3 and caused injuries while accused No. 1 was given stab injuries by PW 1. This version was rightly rejected by the High Court as it was put forward for the first time in the examination of accused Nos. 1 and 3 under Section 342 of the Code of Criminal Procedure and it failed to explain the fatal

injuries caused to the deceased. Moreover, it did not explain the trances of blood which was found in the house of accused No. 2 which were inexplicable only on the basis of the correctness of the prosecution version, namely, that they were the result of the injuries sustained by PW 1 at the hands of accused No. 1. There was some criticism levelled by the learned Counsel appearing on behalf of accused Nos. 2 and 3 that it was surprising that if the deceased was stabbed by accused Nos. 2 and 3 outside the house of accused No. 2 near Pakkersab Motu as alleged by the prosecution, no trace of blood should have been found at the place. But this is not circumstance which militates against the truth of the prosecution version or casts any serious doubt upon it. It has been explained by Dr. Vijaya Kumar PW 8 in his evidence where he stated that as the pericardium was filled with blood "there need not be any gushing of blood after injury No. 1 and there cannot be any blood from injuries Nos. 2 and 3". This explanation has been accepted by the High Court and we do not see any reason to take a different view. The evidence of PW 1 on the material aspect of the case must, therefore, be held to have been rightly accepted by the High Court.

5. So far as the evidence of other eyewitnesses, namely PW 2, PW 3, PW 4 and PW 5 is concerned, we do not think that in respect of these witnesses also the High Court has committed any error in appreciating their evidence. Though it was suggested that PW 4 was involved in a criminal case with accused Nos. 2 and 3 about a year before the date of the incident and Nettikallu, son of PW 3 was also involved in the same criminal case on the side of PW 4, nothing whatsoever could be alleged against PW 2 showing either any enmity on her part against the accused or any direct or indirect interest in the deceased. PW 2 was the wife of Chinna Peddanna, who was equally related as a brother both to accused No. 1 and the deceased and there is no reason why PW 2 should have falsely implicated accused No. 1 or his sons accused Nos. 2 and 3. We have gone through the evidence of PW 2, PW 3, PW 4 and PW 5, but we have not been able to see any such infirmity in these evidences as to warrant our interference with the assessment of the evidence by the High Court. No doubt, some minor contradictions here and there have been pointed out by the learned Counsel appearing on behalf of accused Nos. 2 and 3, but such minor contradictions are bound to appear when ignorant and illiterate women are giving evidence. Even in case of trained and educated persons, memory sometimes plays false and this would be much more so in case of ignorant and rustic women. It must also be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both are present at the scene of offence. It would not, therefore, be right to reject the testimony of witnesses like PW 2, PW 3, PW 4 and PW 5 mere on the basis of minor contradictions. We think that the High Court was right in accepting the testimony given by them.

6. Lastly, the learned Counsel appearing on behalf of accused Nos. 2 and 3 contended that the prosecution has examined only interest witnesses and though one Sunkamma was present at the time when the deceased staggered into house of Chennaiya and fell down dead, and she saw the incident she was not examined, and that introduces a serious infirmity in the prosecution case. We do not think this contention is well founded. In the first place, if the prosecution case were correct, Sunkamma was not an eyewitness to the commission of the offence and there was no point in examining her on behalf of the prosecution. All that she could have deposed to was that the deceased staggered into the house of Chennaiya and dropped dead in the presence of PW 1. But that was in inconsequential part of the story and when PW 1 was there to depose to it, it was not necessary to examine Sunkamma for that purpose. Secondly, non-examination of Sunkamma would be immaterial if the evidence of PW 1 to PW 5 is otherwise found worthy of credence. The prosecution case must stand or fall on the evidence of PW 1 to PW 5, irrespective of the fact whether Sunkamma was examined or not. Thirdly, no question was asked on behalf of accused Nos.

2 and 3 as to why Sunkamma was not examined as a witness. We do not think that non-examination of Sunkamma introduces any infirmity in the prosecution case against accused Nos. 2 and 3.

7. We agree with the appreciation of the evidence of the witnesses by the High Court and concur in the reasoning adopted by the High Court in reaching the conclusion that each of accused Nos. 2 and 3 stabbed the deceased with a dagger and intentionally caused his death and thereby committed the offence of murder under Section 302 of the Indian Penal Code. We accordingly dismissed the appeal.

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