

Manne Subbarao and Another

Vs

State of Andhra Pradesh

Criminal Appeal No. 77 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

12.04.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellants have been convicted under Section 302/34 and sentenced to imprisonment for life. They were also convicted under Section 148 IPC and sentenced to one year's R.I. They were further convicted under Sections 324 and 323 IPC but no separate sentence was passed. The facts of the case are narrated in the judgment of the High Court and that of the Sessions Judge and it is not necessary for us to reproduce the same all over again. We have heard counsel for the parties and have gone through the judgment of the High Court and that of the Sessions Judge. Mr. Jagmohan Khanna appearing as amicus curiae for the appellants has argued the case with great vehemence and industry and has pointed out three manifest defects in the prosecution case which according to him the High Court does not appear to have noticed while reversing the order of acquittal passed by the Sessions Judge.

2. In the first place, it was contended that in view of the fact that PWs 1 and 2, who were the only eyewitnesses and have been believed by the courts, had been involved in the previous incidents of assault, hence it was most unlikely that they would be present in the third incident in which the deceased was assaulted. There was, however, clear evidence of PWs 1 and 2 that the appellants caused injuries with spears to the abdomen of the deceased. PW 1 reported the incident to the Karnam immediately after the occurrence which was later on treated as FIR and which was lodged within two hours of the occurrence. In these circumstances, the Sessions Judge was not at all justified in brushing aside the evidence of PWs 1 and 2 as unreliable.

3. It was then argued that having regard to the fact that the occurrence took place after dark, it would be difficult for the witnesses to identify the appellant. According to the prosecution, the occurrence took place near about 6 to 7 p.m. on May 10, 1971. Some of the witnesses have said that the occurrence took place near about sunset which clearly shows that it would not be so dark that the accused persons could not be identified as some light would still be there and assailants were known persons. We are, therefore, not at all impressed with the contention raised by the learned counsel for the appellant.

4. Thirdly, it was submitted that even assuming that the entire prosecution case is proved there is no evidence to show that the two appellants shared the common intention to murder the deceased. We are, however, unable to accept this argument because the evidence of PWs 1 and 2 clearly show that the appellants had come with the pre-meditated intention to assault the deceased and, in fact, all of

them together assaulted the deceased with spears at the most vital part of the body, i.e. abdomen which resulted in the death of the deceased. For these reasons, the High Court was right in holding that both the appellants shared the common intention to murder the deceased. No other inference in the circumstances was possible.

5. For the reasons, therefore, we find ourselves in complete agreement with the judgment of the High Court and are of the opinion that it was a clear case where no other reasonable view on the evidence was possible. For these reasons, therefore, the appeal is dismissed.

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