

Bandi Mallaiah and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 246 of 1973

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

16.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is against the judgment of the High Court of Andhra Pradesh convicting A-1, A-2 and A-3 under Section 302 read with Section 34 and other offences reversing the judgment of acquittal of the learned Sessions Judge of Khammam. A-4, A-5, A-10 and A-13 who were convicted of certain minor offences and sentenced to short terms of imprisonment have not appealed.

2. The prosecution case briefly was as follows. PW 1 and his brothers Kotaiah, Anantharamaiah, Vankatakrishneiah and Radhakrishnamurthy had property at Cheemalapadu and Motlagudam. Venkatakrishnaiah (PW 2) became divided from his brothers and started residing at Motlagudam while the others were residing at Cheemalapadu. The family owned a cattle-shed at Motlagudam and this fell to the share of Venkatakrishnaiah's brothers. They wanted to dismantle the cattle-shed and share the timber amongst themselves. So on the morning of July 2, 1971, PW 1, his brother Radhakrishnamurthy, PW 5, PW 7, PW 8, PW 9, PW 10, Seethaiah and Jaggaiah went to Motlagudam in four bullock-carts to dismantle the shed and fetch the timber. They reached Motlagudam at 10 a.m. and started dismantling the cattle shed. At that point of time, A-1 came there and asked them not to dismantle the cattle-shed as he wanted to buy it. PW 1 told A-1 that they were not willing to sell the cattle-shed but A-1 was insistent. Two mediators PW 11 and CW 2 were sent for. These mediators suggested that A-1 should give one acre of land and take the cattle-shed. Neither party was agreeable to this course. CW 2 then went away. A-1 went away saying, "I will see how you will dismantle". After A-1 left, PW 1 and his people dismantled the cattle-shed and loaded the timber in their carts. At about 4 p.m., PW 3 came there. He asked them where they were taking the carts. They told him that they were going to Cheemalapadu. After the carts had gone a distance of about 100 yards and when they were in the field of Podem Narsaiah, the seventeen accused came and surrounded the carts. A-1 and A-3 were armed with spears. A-10 was armed with a 'kota-kathi'. The rest of them were armed with sticks. A-1 pierced Radhakrishnamurthy with a spear on the right side of throat. A-3 dealt a blow with a spear on the head of Radhakrishnamurthy. Radhakrishnamurthy fell down. A-1, A-2 and A-3 then beat Radhakrishnamurthy after he had fallen down. A-2 and A-5 beat PW 1 sticks above his left ear and on his right hand. A-14, A-15 and A-16 beat PW 7 with sticks. A-3, A-13, and A-17 beat PW 9 with sticks. A-8 and A-9 beat PW 5 with sticks. A-11 beat PW 8 with a stick. A-4 and a koya beat PW 10 with a stick while A-3 and A-10 beat him with a spear and a 'kota-kathi'. A-4, A-6, A-7 and A-12 beat PW 12. PW 1 ran from the scene to the police station at Karepalli, at a distance off about eight miles from Motlagudam. He gave a report Ex. P1 to PW 18, the Sub-Inspector of Police at 10 p.m. As he was giving the report,

PWs 5, 8, 9 and 10 also reached the police station. PW 18 arranged to send the five injured persons to the hospital at Yellandu through the requisitions Exs. P 11, P 12, P 14 and P 15. He then proceeded to the village Motlagudam where he found the dead body of Radhakrishnamurthy in the field of Podem Narsaiah. He also found three persons PWs. 7, 11, and 12 lying injured in the house of PW 2. The three injured were also sent to the Yellandu hospital. The investigation was taken over by PW 20 who held inquest over the dead body of the deceased and thereafter arranged to send the dead body for autopsy to the hospital at Yellandu. The condition of PW 11 was thought to be serious. Therefore, the Munsif Magistrate, Yellandu was requested his statement. After completing the investigation, a charge-sheet was laid against the seventeen accused persons. The accused denied the offences with which they were charged. It was the case of A-1 that he had purchased the land on which the cattle-shed stood from the eldest brother Anantharamaiah and that the cattle-shed itself had been purchased by one Pentaiah of Karepalli who had dismantled and removed the same. After Pentaiah had removed the cattle-shed, he had himself raised a cattle-shed. On the day of offence when he found PW 1 and his men trying to demolish the cattle-shed he requested the intervention of mediators PW 11, CW 1 and CW 2. He also produced before them the documents Ex. D-2 by which Anantharamaiah had sold the land to him. In spite of his showing the document PW 1 and others were persisting on removing the cattle-shed. When he told that the cattle-shed had earlier been sold to Pentaiah and removed by him, the mediators asked him to go and fetch Pentaiah with any further document which may be available. He left the scene. After he left, PW 1 and his men dismantled the cattle-shed and there was a fight between PW 1 and his men on the one side and the villagers on the other side in the course of which the deceased and others were injured. The learned Sessions Judge, having regard to the various infirmities in the case to which he referred, took the view that the prosecution witnesses, all of whom were interested witnesses, were also unreliable witnesses and that the first information report Ex. P-1 was not given at the time when it was claimed to be given. On appeal by State, the High Court while agreeing with the view expressed by the learned Sessions Judge in regard to the unreliability of PWs 2, 3, 4, 8, 9, 11 and 12 thought that the evidence of PWs 1, 5, 7 and 10 could be safely acted upon. In that view the High Court convicted A-1 to A-3 of the offence under Section 302 read with Section 34 as well as other minor offences. The High Court also convicted A-4, A-5, A-10 and A-13 of other minor offences.

3. We have perused the entire evidence as well as the judgments of the learned Sessions Judge and the High Court. The judgment of the High Court appears to us to be somewhat perfunctory. We are also of the view that some very important circumstances in favour of the accused were not taken serious notice of by the High Court. When PW 11 was in the hospital and when his condition was thought to be serious, a statement was recorded from him by a First Class Magistrate. In his cross-examination PW 11 admitted "I have stated before the Magistrate at the hospital that at about 5.30 in the evening Golla Gopaiah, Esam Papaiah, Magili Ramaiah and some others had come" Golla Gopaiah is A-3, Essam Papaiah is A-17 and Ramaiah is A-13. The importance of the statement was that PW 11 did not mention A-1 or A-2 who according to the present case of the prosecution led the attack but mentioned three other names as the persons who led them. If A-1 and A-2 were present, surely their names would have been the first to be mentioned. This aspect of the matter was overlooked by the High Court. Not only that, the High Court also misread the Statement as we shall presently point out. We have mentioned earlier that the injured persons who reached the police station at 10 p.m. were sent to the Yellandu hospital through requisition Exs. P 11, P 12, P 14 and P 15. In each one of these requisition, the sub-inspector had mentioned that the several injured persons were beaten by Golla Gopaiah and others with sticks. Now, if there was already a first information report in existence in which Bandi Mallaiah (A-1) had been named as the first accused and as the person who led the attack, surely the assailants would have been mentioned in the requisitions as

Bandi Mallaiah and others and not Golla Gopaiah and others. This circumstance throws doubt upon the case of the prosecution that the first information report Ex. P 1 was given at 10. p.m. The High Court, however, got over the circumstance by a misreading of what PW 11 stated in his cross-examination. We have already extracted what he stated. It was : "I have stated before the Magistrate at the hospital that at about 5.30 in the evening Golla Gopaiah, Esam Papaiah, Magili Ramaiah and some others had come". This statement was read by the High Court to mean that at 5.30 PW 11 had told the Magistrate at the hospital that Golla Gopaiah, Esam Papaiah, Magili Ramaiah and others had come and therefore there was already a statement where Golla Gopaiah had been named first as among the assailants. That, according to the High Court sufficiently explained the reference to Golla Gopaiah and others in P 11, P 12, P 14 and P 15. The High Court ignored the circumstance that the Magistrate recorded PW 11's statement, not on the evening of occurrence, but two days later and that the reference to 5.30 in the evening was not to the time when the Magistrate recorded the statement but to the time of the attack. It was suggested to PW 18 the Sub-Inspector of Police, that Ex. P 1 was brought into existence on July 3, 1971 after the completion of the inquest, after due deliberation. It was also suggested that initially a case had been registered against Golla Gopaiah and others but later on the first information report was replaced by the present first information report. The attention of PW 18 was expressly drawn in cross-examination to the statement in the requisitions Exs. P 11, P 12, P 14 and P 15, that assailants were Golla Gopaiah and others. PW 18 offered no explanation as to why the assailants were described as Golla Gopaiah and others instead of Bandi Mallaiah and others. In addition to these significant circumstances it was elicited in the cross-examination of PW 5, PW 8, PW 11 and PW 12 that they had not mentioned about the attack on the deceased by A-1 to A-3 in their statements to the police under Section 161, CrPC though they gave full details of the alleged attack in their evidence in court. The High Court thought that the evidence of the witness could be discarded as false in view of their omission to mention the attack by A-1 to A-3 on the deceased in their earlier statements to the police. The High Court apparently did not appreciate the full significance of the omission of these witnesses to mention the names of A-1 to A-3 in their earlier statements as the persons who attacked the deceased. If the High Court had considered these omissions (amounting to contradiction) along with the circumstances mentioned by us earlier, the High Court would have seen that there was a deliberate attempt to introduce the names of A-1 and A-2 into the case at a later stage. Another important circumstance which the High Court failed to note was that the part now attributed to A-2 in the attack on the deceased was not mentioned in the first information report or in the former statement of PW 9 under Section 161. We further have the evidence of CWs 1 and 2 to the effect that A-1 left the place to go to Karepalli to fetch Pentaiah. These several circumstances incline us to doubt if Ex. P 1 was really given at 10 p.m. as the prosecution would have it. We are of the opinion that at the earliest point of time the names of A-1 and A-2 did not figure as assailants of the deceased and that they were introduced as such at a later stage and it was at that point of time that Ex. P 1 was brought into existence. Shri Rama Reddy, learned counsel for the State of Andhra Pradesh, fairly stated before us that if we were not satisfied about the genuineness of Ex. P 1, the conviction could not be sustained. We accordingly allow the appeal, set aside the conviction and sentences passed on the appellants. They will be set at liberty forthwith.

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