

Hari Obula Reddy and Others

Vs

The State of Andhra Pradesh

Criminal Appeal No. 146 of 1977

(R. S. Sarkaria, A. C. Gupta, P. S. Kailasam JJ)

11.09.1980

JUDGMENT

Sarkaria, J. –

1. This appeal is directed against a judgment, dated December 21, 1976, of the High Court of Andhra Pradesh, reversing the judgment of the Sessions Court, Anantapur, whereby he had acquitted the six accused of offences under Sections 148 and 302 read with Section 149, Penal Code. The prosecution case, as it emerges from the record, is as follows.

2. The deceased, M. Gangi Reddy, was a practising Advocate of Cuddapah. He belonged to village Atchavalli. In that village, there are two rival factions. The deceased was the leader of one faction, while the accused appellants belong to the opposite faction led by Kankarla Narayana Reddi. There had been bad blood and criminal litigation between persons belonging to each of these factions. In election to the office of Sarpanch of Atchavalli the deceased had defeated the said Kankarla Narayana Reddi. A criminal case was instituted against the deceased and 4 others including one Samvarpu Chinna Narayan Reddy, under Section 307, Indian Penal Code, alleging that the deceased went to K.N. Reddy's house armed with a revolver and caused injuries to some persons of the opposite faction. The accused in that case were convicted by the trial court but were acquitted on appeal by the High Court. The deceased and others were being tried for the murder of one Errappa Reddi. That case was pending trial on the date of the murder in question. Accused 1 (Hari) and accused 3 (Kothapu) were cited as eyewitnesses by the prosecution in that murder case against the deceased.

3. On November 15, 1973 at about 12 noon, the deceased was proceeding in a bicycle-rickshaw peddled by PW 4 (Murad) from the Court of the J.S.C. Magistrate at Cuddapah to his house. Before the deceased boarded that rickshaw, his maternal uncle (PW 1), who had come to him for borrowing a sum of Rs. 1000, met him and asked for the loan. The deceased asked PW 1 to come to his house where they would talk about it. When the rickshaw with the deceased reached near Nagamalalla Reddy's Hotel, accused 1 to accused 6 emerged from a place in between a tea stall and the hotel. All the six accused were carrying daggers. One of them shouted : "Gangi Reddy Gadu is going, kill him". Thereafter all the six appellants surrounded the deceased, pulled him out of the rickshaw and repeatedly stabbed him, causing numerous injuries. The rickshaw-puller (PW 4) got down and stood aside for a moment. When the six appellants started stabbing the deceased, PW 4 got frightened and then, ran to the deceased's house raising an out-cry that the deceased was being murdered. PW 2 was also present there at the spot and witnessed the occurrence. The deceased fell to the ground but the assailants continued to stab him till he died. The assailants then ran away. In the meantime, on reaching the deceased's house, PW 4 informed the deceased's wife, Veeramma (PW 5) about the

occurrence. PW 5 then rushed to the scene of offence followed by PW 4. The deceased was lying dead in a pool of blood at the spot. PW 1 and PW 2 were present there. PW 1 and PW 2 took PW 5 (Veeramma) to her house. Leaving Veeramma under the care of PW 2, PW 1 went to the Police Station and lodged a complaint, orally. Thereafter, he handed over the written complaint (Ex. P-1) to the Sub-Inspector. By that time, it was about 1 p.m. PW 1 then returned to the scene of occurrence and saw that the Circle Inspector of Police and some constables were already present there. The Inspector examined PW 1 and recorded his statement during the inquest which was held on the same day between 2 p.m. and 4.30 p.m. A copy of the F.I.R. lodged by PW 1 was received by the Magistrate, the same day at 4 p.m. Post-mortem examination of the dead body of the deceased was performed on the following day at 6 a.m.

4. The trial court found that the evidence of PW 1 and PW 2 did not inspire confidence, and it was most unsafe to convict the accused persons on the basis of their testimony, particularly when the evidence of PWs 3 to 5 who were examined to corroborate them, was itself unreliable.

5. The trial court found it unsafe to act upon the evidence of PW 1 for these reasons :

(1) PW 1 is a close relation of the deceased and was highly interested in the prosecution. Admittedly, he is the maternal uncle of the deceased : his younger brother who married the deceased's younger sister, manages the estate of the deceased; his cousin (Dayadi), Samvarpu Chinna Narayan Reddy, was a co-accused of the deceased and others, who were jointly tried in respect of an offence under Section 307, Indian Penal Code.

(2) If PW 1 had really identified the assailants, there is no reason why he should not have disclosed their names to the various spectators who had gathered around the dead body soon after the occurrence. PW 1 does not say that he or PW 2 had disclosed the names of the assailants of the deceased to PW 5 when she came on the scene of occurrence.

(3) PW 1 gives only an omnibus version. He is not able to say who out of the accused pulled out the deceased from the rickshaw and who gave the first blow. He merely says that six people from the direction of Azeez Khan's tea stall, surrounded the rickshaw, dragged the deceased down and stabbed him to death thereafter.

(4) If PW 1 was really present and met the deceased at the gate of the Court, the deceased should have offered him a lift in the rickshaw. It was "rather improbable" that the deceased should have asked PW 1, a respectable elder to follow him on foot.

(5) The so-called report, Ex. P-1, was not lodged by PW 1 at the Police Station before 1 p.m.; although the investigation had been started by the Police on reaching the spot at 12.30 p.m. The report Ex. P-1 was hit by Section 162, Criminal Procedure Code, and therefore, was not admissible in evidence.

(6) The evidence of the Rickshawala (PW 4) was itself of doubtful veracity. His rickshaw was not seized at the time of the inquest. No Mahazar was prepared to evidence its seizure. The name of PW 4 being the driver of the rickshaw, was not given in Ex. P-1, lodged with the Police by PW 1 at 1 p.m.

(7) Shopkeepers and other persons of the locality, who could be independent

eyewitnesses, were not examined by the prosecution even to vouch the presence of PW 1 and PW 2 at the scene.

(8) PW 4 stated that he could not identify any of the assailants because he had not seen them before the occurrence. PW 4 says that he had seen PW 1, also, for the first time in the Court compound for a brief moment when he talked to the deceased, while the latter was boarding the rickshaw; Identification of PW 1 in Court at the trial, as the person who had on the day of occurrence talked to the deceased was, therefore, not reliable.

(9) The evidence of PW 3, a lawyer's clerk, to the effect, that he had seen all the six accused at 10.30 a.m. at Cuddapah, when the witness was on his way to Court, could not be safely accepted. PW 3 admittedly, was a close relation of PW 1 and of the deceased. "The bias of PW 1 can be seen from the fact that he denied the truth of the suggestion that PW 3, free of cost, resides in the deceased's house. PW 3 was frank enough to admit that he resides in the deceased's house and also messes with him without paying any boarding charges. PW 3's father Rami Reddy figured as a witness in the double murder case of Sambariva Reddy and B. Obula Reddy which ended in acquittal. In that case A1 to A5, A3's late brother, Errappa Reddy, among others, were the accused."

6. For not accepting the evidence of PW 2, the trial court said :

(a) His father was being prosecuted along with the deceased and others for the murder of Errappa Reddy, brother of accused 3.

(b) The presence of PW 2 at or near the scene of offence is not spoken to by PW 4. Although before the Court, PW 4 claimed to have seen PW 2 at the scene of offence when he returned there with PW 5, in his statement under Section 161, Criminal Procedure Code, he did not refer to the presence of PW 2 at all.

(c) PW 2's presence at the scene of occurrences, at 12 noon, was highly doubtful. PW 2, according to his version, appeared for interview before the Principal of Cuddapah College as he was seeking admission to that college; that the interviews started at 10.30 a.m. and he was the 8th candidate to be interviewed. He was definite that by 11 a.m. his interview was over. But the fact that his interview was over by that time, has not been confirmed by PW 7 who is a College Lecturer and was assisting the Principal and had noted the word "admit" on the application form Ex. P-3, presented by PW 2. At best, the evidence of PW 7 and Exs. P-3 to P-5 only shows that PW 2 could have been present at Cuddapah on November 15, 1973, but "it does not further show that PW 2 finished his interview by 11 a.m. and could have been present to witness the incident at about 12 Noon."

(d) "PW 2's presence at the scene of offence is spoken to by PW 1 only and by no other independent witness. PW 4 does not speak to his presence."

(e) Like PW 1, PW 2, also, did not disclose the names of the assailants to the persons who had gathered at the spot soon after the occurrence.

(f) PW 2 also does not say that he had told PW 5 when she came to spot, the names

of the accused as the assailants of the deceased.

(g) Like PW 1, he also gives an omnibus description of the assault, bereft of all details or any specific part played by any of the accused in the assault.

(h) His evidence, also, has not been corroborated on material points from independent sources.

7. Disagreeing with the trial court, the High Court found that both PW 1 and PW 2 were worthy of credit and that the evidence of these witnesses had been substantially corroborated by PW 4 and PW 5. The High Court further held that the oral complaint made by PW 1 or the written report (Ex. P-1) would be inadmissible as a First Information Report; that PW 1 had emerged unscathed from a protracted cross-examination; that Lakshmi Reddy's (PW 1) statement to the effect that he had himself written Ex. P-1 without anybody's help was not true because the witness could not write his own father's name, but this point loses its importance in view of the fact that Ex. P-1, not being an FIR, cannot be used to corroborate the testimony of Lakshmi Reddy (PW 1); that there is nothing in the evidence of PW-1 which could lead to the conclusion that the witness had not really seen the incident or that he is not a witness of truth; that the mere fact that witness could not explain how the various articles, including the dagger (M.O. 11) came to lie at the scene of occurrence, was not a ground to discredit the witness; that the mere fact that there was no blood on the dagger (M.O. 11) would not necessarily show that his evidence is totally false; all that it would show is that one of the assailants did not use his dagger; that the mere fact that PW 1 instead of accompanying the deceased in the rickshaw was asked to go on foot to his house cannot lead to the total rejection of the testimony of PW 1; that there was no substance in the contention that PW 1 was a chance witness; that while it was true that Lakshmi Reddy (PW 1) did not reside in Cuddapah town, but had come from a distance of 51 miles to Cuddapah from his village that day, his presence at the scene of occurrence "cannot be doubted in view of the fact that his name was mentioned at the earliest opportunity and no contradiction in that regard has been brought out in the course of the evidence; that it is true that PW 1 is a relative of the deceased, but that fact is often a sure guarantee of truth; and that the incident took place in broad daylight and there would be no question of the witness not identifying the assailants.

8. Regarding PW 2, the High Court observed that he is 18 years old student and cannot be called a relative of the deceased and is, in the nature of an independent witness; that his presence in Cuddapah town stood amply proved by the evidence of PW 7, which, in turn, was fortified by documentary evidence in the form of Ex. P-3, Ex. P-4 and Ex. P-5, viz. Challans issued to PW 2 on November 15, 1973, by the College for depositing the admission fee etc.; that once his presence in Cuddapah town is proved, the fact that he happened to be on the public road near the scene of incident cannot make him a chance witness; that only two contradictions have been brought out as between his evidence in the trial court and his statement to the police, but neither of them is material. The High Court, however, noted that the first of these contradictions (Ex. D-4) is in regard to the point as to whether the witness' father belonged to the party of Mallusidda Reddy or not. His statement in the trial court was that he did not know that his father belonged to the party; whereas it has been proved by Ex. D-4 that he had made that statement before the police. The High Court, however, did not comment further as to why this contradiction was of no consequence; but said that he was not a chance witness because his presence in Cuddapah town had been established by the independent testimony of PW 7. The High Court further held that the "intrinsic credibility" of Lakshmi Reddy and Gangi Reddi is supported by the evidence of Mallu Veeramma, widow of the deceased, who has not only corroborated the statements of both these witnesses that they had come

to enquire for the deceased at his house that morning, but has also borne out their presence at the place of the incident almost immediately after it occurred; that PW 5 had consistently stated to the police as well as at the trial that PW 1 and PW 2 had told her that the six accused persons were reasonable for having killed her husband, whereas neither PW 1 nor PW 2 have deposed at the trial to having made that statement to her.

9. Commenting on the evidence of the rickshaw driver, Murad (PW 4), the High Court said that the evidence of this witness not only bears out the background of the incident, viz., the deceased having got into his rickshaw to return home, but also bears out the presence of PW 1 whom he identifies; that it is not most significant to note that there is no cross-examination at all of this witness in regard to the incident itself, or in regard to the fact that the deceased had engaged his rickshaw and was returning home from the court in that rickshaw when he was killed in the manner alleged by the prosecution; that in the absence of cross-examination on these material points, it could not be contended either that Murad was not a witness to that incident, or that the deceased was not in his rickshaw at the time when he was set upon by his assailants; that since the testimony of Murad on this point had gone unchallenged, there is no reason why his testimony should not be accepted.

10. Shri Ram Reddy, learned counsel for the appellants, contends that the High Court has not effectively displaced the main reason given by the trial court for holding that the evidence of PW 1 and PW 2 could not form as a safe basis for convicting the accused persons, in the absence of corroboration on material points by independent evidence. It is submitted that the High Court was not right in holding that PW 1 was not a relative of the deceased and that he was an independent witness. It is further pointed out that the learned Judges of the High Court were not right in holding that the evidence of PW 7 makes the presence of PW 2 at the time and place of occurrence, probable. In any case, it is submitted, the evidence of PW 1 and PW 2 could not be called "intrinsically credible"; it was clearly of an interested and partisan character and as rightly held by the trial court, it was hazardous to convict the six accused persons on their uncorroborated testimony. It is further submitted that while the fact of PW 1 and PW 2 coming to Cuddapah on the day of occurrence was probable but their presence at the time and place of the incident was extremely doubtful. It is further emphasised that the fact that the rickshaw from which the deceased was pulled down by the assailants was driven by PW 4, does not find mention in the statement (Ex. P-1) made by PW 1 to the police; that in his testimony, PW 5 has not stated that he had seen PW 1 following the rickshaw, on foot, or had seen him at or near the scene of offence, when the assault started. It is further stressed that according to the evidence on record, when the Police Sub-Inspector and the Circle Inspector came to the scene of the incident, they did not find PW 1 there. Summing up his arguments, Shri Reddy submitted that the evaluation of the evidence and the conclusion drawn by the trial court could not, by any reckoning, be said to be erroneous or unreasonable, much less could the view of the trial court be branded as perverse or palpably wrong. It is maintained that even if two views of the evidence were possible, the High Court should not have, as a sound rule of practice, disturbed the acquittal.

11. On the other hand, Shri Khader, appearing for the respondent-State, submits that the presence of PW 1 and PW 2 at the scene of occurrence was highly probable. It is pointed out that even the courts had conceded that in the forenoon of the day of occurrence, the presence of these witnesses in Cuddapah town was a probable fact : that the evidence of the College Lecturer (PW 7) coupled with the documentary evidence (Ex. P-3, Ex. P-4 and Ex. P-5) had established beyond all manner of doubt that PW 2 had appeared before the Principal who was assisted by the Lecturer (PW 7), for admission in the local College on the day of occurrence, and that the interviews for admission had started at 10 a.m. There were 38 candidates of C.E.C. Group, Inter, in all, including PW 2 who had

been summoned for interview that day. PW 2 was seeking admission to Intermediate Class (C.E.C. Group). The word "admit" was endorsed by PW 7 on the application form (Ex. P-3) of PW 2 immediately after his interview. The Principal initialled Ex. P-3, there and then. Thereafter, the College Office issued the challans (Ex. P-4 and Ex. P-5) to PW 2 for deposit of the admission and other fees into the Sub-Treasury in the State Bank of India within 24 hours of their issue. Cross-examined, the witness could not say whether PW 2 was the 7th or 8th candidate to be interviewed. Nor could he say at what time the last candidate on that day was interviewed. The witness did not deny the possibility of the last candidate having been interviewed after 4 p.m. and before 5 p.m. on November 15, 1973. The witness could not say whether C.E.C. Inter candidates were interviewed first, or the Bi. P.C. Group which had 15 candidates. PW 7 was a College Lecturer and, otherwise and independent and wholly reliable witness. PW 2 testified that he was interviewed as the 8th or 9th candidate for about 4 or 5 minutes at about 10.30 a.m.; that at the end of the interview, the word "admit" was endorsed on his application (Ex. P-3) and he then collected the Sub-Treasury Challans (Ex. P-4 and Ex. P-5) from the College Office for depositing the amounts of Rs. 35 and Rs. 36 by 11 a.m. The witness then went to the deceased's house 7 furlongs away, to seek guidance in remitting the fees under those challans. He reached the house of the deceased at about 11.45 a.m. and learnt from the deceased's wife, Veeramma (PW 5) that the deceased had gone to the old Court buildings. The witness then proceeded towards the old Court buildings. By the time PW 2 entered the Court Road, he saw the deceased coming in rickshaw from the opposite direction of the Court. The witness also saw PW 1 behind the rickshaw, following on foot. PW 2 further stated that by the time the rickshaw came near N. Mulla Reddy's hotel, he saw accused 1 to accused 6 emerging. One of the accused shouted : "Gangi Reddy is coming, kill him". Thereupon, all the six accused surrounded the rickshaw, dragged the deceased out of it and started stabbing the deceased with daggers which they all were holding. The rickshaw driver ran towards the deceased's house shouting that the deceased was stabbed. In cross-examination, he revealed that he saw the occurrence from a distance of about 30 or 35 yards and that the occurrence took place at a distance of about 80 or 85 yards from the gate of the Court buildings. The witness stated that on seeing the assault on the deceased neither he nor PW 1 raised any alarm. Excepting the fact that the father of PW 2 was a member of the party opposed to the accused and was being prosecuted along with the deceased and others for the murder of Errappa Reddy, brother of accused 3, nothing else was elicited in the lengthy cross-examination to show that the witness was not speaking the truth. He was a student, hardly 18 years old. Nothing has been brought out in the gruelling cross-examination to show that he is related to the deceased.

12. The independent and trustworthy evidence of the College Lecturer (PW 7) goes a long way to corroborate the evidence of PW 2, although it does not positively confirm that PW 2 was interviewed as the 8th or 9th candidate at about 10.30 a.m. PW 7 was unable to confirm that fact because at that time he had no record available with him from which he could refresh his memory. He was not further asked as to whether any official record indicating the time and turn of the interview of the various candidates of that date was available in the College Office. Even so, the evidence of PW 7, so far as it goes, lends probability to the version of PW 2 that he was the 8th or 9th candidate to be interviewed and he was free from the College Office after collecting the Treasury Challans by 11 a.m.

13. PW 1 also had fully supported the prosecution story set out at the commencement of this judgment. He emerged unshaken from the ordeal of a lengthy and searing cross-examination. He frankly admitted his close relationship with the deceased. At first flush, our impression was that PW 1 is a partyman of the deceased who had borne with the deceased in earlier incidents of factious strife. In order to clear up the point, we further heard the arguments of the learned counsel and

carefully scrutinized the record all over again. We find that in any incident, litigation or previous proceeding with which the deceased or his partymen were concerned, PW 1 did not figure as an accused, or respondent or a witness or in any other capacity. Thus, all that can be said is that PW 1, being the maternal uncle of the deceased, and PW 2, being the son of a person who was being prosecuted along with the deceased for the murder of a person belonging to the opposing faction of the accused, can be said to be interested witnesses. But it is well settled that interested evidence is not necessarily unreliable evidence. Even partnership by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only board guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.

14. Now, let us apply these board tests to the evidence of PW 1 and PW 2.

15. We have already seen that the presence of PW 2 near the scene of the offence at about 12 noon was probable. Regarding PW 1, it may be noted that he is a resident of village Atchavalli which is more than 50 miles from Cuddapah town. The witness has stated that from Atchavalli on the day of occurrence, he started at 4 a.m. and after covering on foot a distance of 6 miles he reached the bus stand on the metalled road at Pullivendula from where he took a bus at 7.15 a.m. and after travelling in the bus over a distance of 45 miles reached Cuddapah at 10.45 a.m. After alighting the bus at Cuddapah, the witness went to the deceased's house, which is 5 or 6 furlongs from the bus stand. After learning from Veeramma that the deceased had gone to the Court, the witness went to the Court to borrow Rs. 1000 from him and found the deceased persuing some record in the Court hall of the Magistrate. The witness waited for some time outside. At about 11.45 a.m., the deceased came out of the hall. The witness apprised the deceased the purpose of his visit. While talking, both went to a rickshaw. The deceased got into that rickshaw which was driven by a person whom the witness identified in Court as PW 4 (Murad). The deceased while getting into the rickshaw, told this witness to come and meet him at his house. The rickshaw was then driven ahead, while the deceased followed the rickshaw on foot. When the witness reached a distance of some barars (15 yards ?) from the gate of the Court buildings, and the rickshaw had reached 50 yards ahead, near the hotel of Malla Reddy, the witness saw all the six accused (A1 to A6) emerging from a place in between the

tea-stall and Naga Malla Reddy's hotel. All the six were armed with daggers. He further testified how one of the accused shouted that Gangi Reddy Gadu was going and should be killed and how thereupon all the six accused pulled down the deceased from the rickshaw and stabbed him repeatedly all over the body. He further stated how the rickshaw-puller (PW 4) leaving the rickshaw at the spot, ran towards the house of the deceased raising an alarm that the deceased was being murdered. PW 1 also deposed to the presence of PW 2 near the scene of occurrence on the front side of the rickshaw. PW 1 further stated how after the departure of the assailants, he went ahead to the scene of occurrence and found life extinct in the deceased who was lying there in a pool of blood. Almost simultaneously, Veeramma, widow of the deceased followed by PW 2 also reached there. The witness and PW 2 however, took Veeramma back to her house. Leaving Veeramma at the house under the care of PW 2, the witness proceeded to the Police Station to lodge a report. He met the Sub-Inspector and orally informed him how accused 1 to accused 6 had murdered the deceased. Thereafter, he drafted the complaint (Ex. P-1) and handed it over in the Police Station at 1 p.m. and then returned to the scene of the offence. The Circle Inspector and other constables were already present there. PW 1 further stated that the Circle Inspector examined him and typed his statement during the inquest. He stated that when he returned to the site after leaving Veeramma at her house, PW 4 (Murad) was not there, although his rickshaw was standing there by the side of the scene of offence at a distance of 3 baras towards the East from the place where the deceased lay dead.

16. The testimony of PW 1 finds corroboration to a material extent in material particulars from the evidence of an independent witness, PW 4 (Murad).

17. It will be profitable to extract Murad's examination-in-chief, in full :

Cycle Rickshaw Puller of Cuddapah town. I keep my rickshaw in Nagarajupet. I own that rickshaw. For about 2 years prior to his death the deceased was regularly going in my rickshaw. On the date of occurrence at about 11 a.m. the deceased got into my rickshaw to go to the old Court. I dropped him there. The deceased while going into the Court building asked me to wait in the Court compound to take him somewhere. At about 12 noon he came to get into my rickshaw. There was another person by the deceased's side talking to him (whom the witness identifies as PW 1). The deceased got into my rickshaw asking PW 1 to meet him at his house. The deceased asked me to take him to his house. As I was passing by the side of N. Malla Reddy's hotel and the tea stall six persons came from the direction of that hotel and the stall. One of them cried "Here goes Gangi Reddy (deceased) kill him". The six of them were armed with daggers. Those six persons surrounded the rickshaw. The six of them dragged the deceased by catching hold of his shoulders or arms and legs. (Again says assailants did not drag the deceased by his legs). As the assailants were dragging the deceased down, the deceased got out of the rickshaw. After the deceased got down, I also got down from my seat on the rickshaw. After the 6 assailants started stabbing the deceased, I got frightened and ran towards the deceased's house, to inform the deceased's wife of this occurrence. I went shouting that the deceased was being stabbed. I shouted like that for some distance and not all the way to his house. I went to the deceased's house and informed his wife that 6 persons were surrounding the deceased and killing him with daggers. The deceased's wife went running towards the scene of offence and I went running after her. We went to the scene of offence. The deceased was lying dead in a pool of blood. I saw PW 2 and PW 1 near the corpse. Then I went home out of fear keeping the rickshaw at the scene of offence itself. By about 4.30 p.m. some P.Cs. came and took me to the scene of offence. The C.I. and

S.I. were present. The corpse was there. The C.I. examined me and typed my statement. M.O. 9 fell off from the rickshaw, as the deceased was being pulled out by his assailants.

Cross-examined about the meeting and talk of PW 1 with the deceased in the Court compound, PW 4 stated that after getting into the rickshaw, the deceased asked PW 1 : "Mamma, come to my house we will talk". PW 4 has stated that the deceased boarded his rickshaw at a place which was about 15 yards from the gate of the Court compound. We have noticed that according to PW 2, the place of occurrence is about 80 or 85 yards from the gate of the old Court buildings. One of the grounds on which the trial court criticised the evidence of PW 4 was that since the witness had cursorily seen PW 1 for the first time (with the deceased) only on November 15, 1973, and was not known to him (PW 1) previously, it was unsafe to rely on the identification of PW 1 by PW 4 and vice versa, in Court. It was emphasised, that in contrast with it, PW 4 had unreservedly expressed his inability to identify any of the six accused as the assailants of the deceased.

18. The arguments was obviously devoid of merit. It is significant that the precise words, namely, "Mamma, come to my house we will talk", were elicited from the witness in cross-examination. The very fact that the deceased addressed that person as 'Mamma', assures the identity of PW 1. Then, after the murder, also, PW 4 must have had ample time and occasions to see PW 1 with the police at least on the day of occurrence. The impression of PW 1 and the talk which he had with the deceased when the latter was boarding the rickshaw, must have become ingrained in the memory of PW 4.

19. It is not very clear from the evidence of PW 4 whether the deceased got into the rickshaw of PW 4 inside the Court compound or outside at a distance of about 15 yards from the Court's gate. Nevertheless, keeping in view the difference in the normal speed of a pedestrian and a peddled cycle-rickshaw, PW 1 who started on foot simultaneously with the rickshaw, would have covered about 15 or 16 yards from the Court's gate, while the rickshaw would be about 50 yards ahead of him. This means that the version of PW 1, that he saw the incident from a distance of about 50 yards when he had covered about 10-15 yards from the Court-gate, was extremely probable. There was no obstruction to PW 1's view of the scene of occurrence. It was broad daylight. From a distance of about 50 yards, therefore, it was not difficult for PW 1 to identify the assailants who were not strangers to him. The probability of PW 1 and PW 2 having seen the occurrence, stood further confirmed by the circumstances that when PW 4, the rickshaw-puller, on seeing the occurrence, rushed to the house of the deceased and returned to spot with Veeramma, he saw both PW 1 and PW 2 there near the dead body of the deceased.

20. Similarly, PW 13, the Circle Inspector, who had reached the scene of offence along with PW 12 at about 12.30 p.m., found PW 1 present at the scene of offence. He did not find PW 2 and PW 5 there but sent for them from the house of the deceased, and on their arrival served them with writ of summonses. He also stated that he served summons on PW 1, also, when he found him present at the spot. It was argued that if PW 1 had been present there at the spot, there was no necessity to serve him with a writ of summons. There is hardly any merit in this argument.

21. We do not think that the sworn word of PW 13 about the presence of PW 1 at the spot can be disbelieved merely because he served PW 1 with a writ of summons. Further, it is in the evidence of PW 1 and PW 2 that since Veeramma was terribly grief-stricken and wailing, she was sent to her house along with PW 2. That explains why PW 13 had to send for PW 2 and PW 5 from the house of the deceased.

22. It is noteworthy that the house of the deceased was at a distance of about three or four furlongs only from the site of the incident. This means, if Murad (PW 4) went running to the house of the deceased raising an outcry and came back running along with Veeramma, it would not have taken him more than 15 minutes or so to cover that much distance. Veeramma also says that when she came to the scene of offence, she found both PW 1 and PW 2 present there. PW 1 and PW 2 could not have been found there within 15 or 16 minutes of the occurrence, had they not been already present there in the vicinity.

23. Murad was a totally disinterested and independent witness belonging to another community. There was no reason, whatever to reject his testimony. It is true that Murad does not say that he had seen PW 1 or PW 2 near the scene of occurrence when he saw the incident and when he was on his way to the house of the deceased, but he has given a cogent explanation for this omission. In cross-examination, he stated that once he started peddling his rickshaw from the Court towards the scene of occurrence, he did not look back to find out what was happening behind. While seeing the occurrence or getting down from his rickshaw and running to the house of the deceased, he did not look back to observe if there was any other person on the road at that time. This conduct of the witness was quite natural. As a rickshaw driver, his attention must have focused ahead on the road to avoid any accident or collision. While the deceased was being pulled out of the rickshaw and assaulted, his attention must have been naturally rivetted to what was happening to the deceased. In that out-of-joint situation, while running to the house of Veeramma, also, the first consideration that prevailed with him was to lose no time in informing Veeramma.

24. Another argument was that no Mahazar or memo to evidence the seizure of the rickshaw by the investigating officer, at the time of the inquest, was prepared and that this omission casts a doubt as to whether the rickshaw in which the deceased was travelling, immediately before the occurrence, was peddled by Murad (PW 4). It is true that no Mahazar was prepared regarding the seizure of the rickshaw at the time of inquest. But it is in evidence that the rickshaw was impounded. It was put under restraint by the Inspector, and was, after the inquest, seized and taken to the Police Station. It was released and given on superdnama under the orders of the Court to Murad (PW 4) a couple of months later. These facts have been deposed to by the Circle Inspector (PW 13) and Murad (PW 4). As rightly observed by the High Court, the fact that Murad's evidence on the point that the deceased was going in his rickshaw when he was pulled down and stabbed by six persons, was not seriously challenged in cross-examination. The discussion of PW 4's evidence by the trial court was perfunctory and slipshod. The High Court has duly discussed his evidence and has rightly accepted it. Murad's evidence lent assurance to the ocular account given by PW 1 and PW 2 in regard to these facts :

- (1) that PW 1 had met the deceased nearabout the Court-gate and the deceased had asked PW 1 to follow the rickshaw to his house where they would talk; and
- (2) that the deceased was stabbed repeatedly by six persons with daggers; and
- (3) that PW 1 and PW 2 were seen by him at the spot when he returned there with Veeramma, about 15-17 minutes after the occurrence.

25. The medical evidence shows that there were no less than 37 injuries, mostly stab wounds, on the body of the deceased. In the opinion of the medical witness, the numerous stab wounds on the deceased including injuries 4 to 8, 15, 28 and 33 which were fatal injuries, could be caused with dagger. The numerous stab and incised wounds found on the body of the deceased and the swift and

daring manner of executing his daylight murder in a town, also indicate that the deceased was waylaid and done to death by several persons. Since the deceased along with others was being prosecuted for the murder of Errappa Reddy who was the brother of accused 3 and a leader of the faction opposed to the deceased, it could be said that the six accused had a fairly strong motive to murder the deceased.

26. PW 5 also confirmed that when she came rushing to the scene of occurrence, PW 1 and PW 2 were present there and told her that the six accused had stabbed her husband to death. It is true that PW 1 and PW 2 do not say that they had apprised Veeramma of the names of the accused as the assailants but this is a mere omission and not a contradiction. Presumably PW 1 and PW 2 were not specifically questioned about this fact.

27. We have as a departure from our normal practice, sufficiently examined the evidence of the material witnesses. We do not want to dilate further and to deal with each and every argument canvassed by the learned counsel for the appellants. Almost all these contentions were canvassed before the High Court and were rightly negated.

28. It is not necessary to go into all further details. Suffice it to say that the trial court was clearly wrong in holding that the evidence of PW 1 and PW 2 had not been corroborated from independent sources, and that PW 4 was not an independent and reliable witness. We agree with the High Court that the unimpeached and trustworthy evidence of the rickshaw-puller (PW 4) went a long way to lend assurance to the evidence of PW 1 and PW 2. In the circumstances of this case, it cannot be said that the view of the evidence taken by the trial court was sound. Thus, the High Court has given convincing reasons for reversing the acquittal and convicting the appellants.

29. The appeal fails and is dismissed. If any of the appellants is on bail, he shall surrender to his bail to serve out the sentence inflicted on him.

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