

Eqbal Baig

Vs

State of Andhra Pradesh

Criminal Appeal No. 504 of 1977

(G. L. Oza, V. B. Eradi JJ)

17.03.1986

JUDGMENT

OZA, J. -

1. This appeal arises out of the conviction of the appellant along with three others by the Sessions Court of Khamam District dated March 1, 1976 in Sessions Case 8 of 1975 for imprisonment for life, maintained in appeal by the High Court of Andhra Pradesh under Section 302 read with Section 149 IPC. Four persons were convicted by the High Court whereas seven persons were acquitted, the special leave petition was filed on behalf of the four convicted persons, but that of appellant only was granted and hence this appeal by the appellant against his conviction.

2. It is an unfortunate incident arising out of the trade union rivalry where a group of persons belonging to one trade union attacked and assaulted the leaders of the rival union and the two of the rival union who were attacked, succumbed to the injuries as a result of this incident. The incident is alleged to be of December 18, 1974 at 6.30 p.m. in a bus.

3. It is alleged that at about 6.30 p.m. when this bus driven by PW 7 reached the stop i.e. ninth incline, PW 8 was the conductor of the bus, the two deceased persons, PWs 1 to 6 and 10 and accused 14 and 16 along with Ghouse Khan got into the bus. Accused 1 and 2, who were also at the bus stage near a motorcycle, left the place before the bus started by their motorcycle. PWs 9 and 10 were waiting at eighth incline bus stage and they noticed some accused persons coming from the liquor shop to the eighth incline bus stage. Accused 1 and 2 came there on motorcycle and all of them joined. When the bus with the two deceased and the witnesses came to the eighth incline bus stage, all the accused persons who were already there at the eighth incline bus stage proceeded to the bus and accused 1 and 2 said that the two deceased were in the bus and should be dragged and killed. Immediately accused 3, 4, 9, 10 and 11 entered the bus. Accused 14 i.e. the present appellant pointed out the two deceased. Thereafter the accused entered the bus, dragged Yellaiah. Accused 14 and 16 also came into the bus and Yellaiah was beaten by accused 5, 8 and others with sticks. Accused 14 stabbed him with a knife. Accused 3, 4, 9, 10 and 11 again into the bus and dragged Rayamallu. Rayamallu caught hold of the rod of the bus and tried to allied (sic) to the bus. Accused 9, 10 and 11 stabbed him with knives in the bus itself. He was thereafter dragged and the accused persons waiting outside the bus beat him with sticks and stones. PWs 2 and 3 who were in the bus got down and ran away being afraid of their being attacked. Accused 5, 6, 9, 10 and 14 again got into the bus and the bus started proceeding. Near the filter bed accused 9 pointed put a knife to the driver and conductor and asked the driver to stop the bus. When the bus stopped accused 9 brought some carta and poured it on the footboard where the blood was. Accused 5, 6 and 10 erased the blood with earth and then the accused asked the driver to take away the bus.

4. PW 1 continued to travel in the bus and after reaching Kothagudem he proceeded to the town police station and informed the Sub-Inspector PW 17 at about 7.15 p.m. that the two deceased were being attacked by accused 1, 2 and others. PW 17 the SI made an entry in the General Diary and proceeded to the scene on a motorcycle, along with PW 1 to the eighth incline bus stage. There he noticed the two dead bodies. PW 1 got a report recorded from some passers-by and gave the same to PW 17 at about 9 p.m. Ex. P-1 is the said report. The offence was registered and PW 18 the Circle Inspector of Police received the FIR, arrived at the scene of occurrence and took over the investigation. The bodies were sent for post-mortem examination and after investigation charge-sheet was filed and on trial accused persons were convicted and on appeal, the conviction of four were maintained and the rest were acquitted.

5. Learned counsel appearing for the appellant frankly conceded that there are number of witnesses who had named this appellant but the leave was granted mainly on the ground that in the first information report and inquest report, the name of this appellant was not mentioned and as this was a case of trade union rivalry, the possibility that this appellant was implicated as an afterthought could not be ruled out.

6. Having heard learned counsel for parties and gone through the judgments of the two courts, it appears clear that the incident had taken place in circumstances stated above. Where a number of people, some of them already in the bus and others entered in a riotous mood and the bus which had already a number of passengers this assault started resulting in killing of two persons. A person who was present all through and went in the bus to the town to reach the police station to lodge the report and therefore his omitting the name of some persons with all minute details of the incident could not be said to be an act on the basis of which the rest of the evidence could be discarded. The High Court while considering this aspect of the matter observed :

With regards A-14, it is true that his name was not mentioned in the inquest report. PWs 1 to 3 in their present depositions have implicated A-14 also. Even if we eliminate the evidence of these witnesses so far as A-14 is concerned, still there is the evidence of other witnesses viz. PWs 4 to 7 and 10.

The High Court further observed that :

It must be remembered that PW 7 is the driver of the bus who is an independent witness. We do not see any reasons as to why he should speak falsehood against A-14. The mere fact that for some reason or the other his name is not mentioned in the inquest report cannot be a ground to reject the evidence of so many witnesses. Thus, we see no reason to interfere with the findings of the lower court against A-14.

In the face of all these evidence, the High Court came to the conclusion that this appellant stabbed deceased Yellaiah with a knife. It was also contended that in the inquest report also the name of this appellant was not mentioned. It could not be contended that the inquest report is the statement of any person wherein all the names ought to have been mentioned.

7. The two witnesses PWs 2 and 3 were the eye-witnesses who were also in the bus along with PW 1 and got down at the eighth incline bus stage and it is these two witnesses who were examined at the inquest and in their statements certain omissions were suggested and their omission of the name of the appellant in the inquest will not be of much consequence as the High Court considered all the evidence in detail. The High Court, in respect of this appellant, placed much reliance on the

evidence of PWs 4, 7, and 10. Admittedly PW 7 was the driver of the bus and the High Court rightly observed that he was an independent witness.

8. In our opinion, there is no merit in this appeal. The appeal is therefore dismissed. The conviction and sentence passed against the appellant are maintained. He is on bail. He shall surrender to custody to serve out the remaining part of the sentence.

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