State of Andhra Pradesh

Vs

Bogam Chandraiah and Another

Criminal Appeal No. 476 of 1977

(S. Natarajan, M. P. Thakkar JJ)

05.08.1986

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave by the State of Andhra Pradesh is directed against the judgment of the High Court of Andhra Pradesh in Criminal Appeal No. 308 of 1975 setting aside the conviction of respondents 1 and 2 under Section 302 read with Section 34 of the Indian Penal Code and the sentence of imprisonment for life awarded therefor and acquitting them.

2. Respondents 1 and 2 who were arrayed as A-1 and A-2 and two others were charged under Section 302 read with Section 34 of the Indian Penal Code for having committed the murder of one P. Narasaiah of Kolekal village at about 7.30 a.m. on November 25, 1974 by respondents 1 and 2 attacking him with an axe (MO 4) and knife (MO 9) respectively and the other two accused holding him during the attack to facilitate the crime. The learned Sessions Judge accepted the prosecution case and convicted respondents 1 and 2 under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life but acquitted accused 3 and 4 on the ground that their complicity in the commission of the offence was not fully proved. Respondents 1 and 2 preferred Criminal Appeal No. 308 of 1975 to the High Court. The High Court has allowed their appeal, acquitted them, and set them at liberty.

3. Before referring to the arguments of Mr C. Obulapathi Chowdary, Additional Public Prosecutor appearing for the State we will refer in brief to the facts of the case and the evidence of the witnesses. On the morning of November 25, 1974 deceased Narasaiah, who was a sarpanch and a moneylender left his house for the bus stand in order to proceed to Hyderabad. At about 7 a.m., when he came near the tea shop of PW 6 Shaik Ali, he was attacked by respondents 1 and 2 with an axe and knife respectively. The knife had been carried by the second respondent but as regards the axe it is said to have been snatched from PW 4 Laxmi Narsiah, a shepherd standing nearby. Besides PW 4 mentioned above, PW 5 Mangali Narsaiah who had just come out of the tea shop of PW 6 after taking tea, saw the respondents launching their attack on the deceased. At once PW 5 called out PW 6 and he came out followed by PW 7 Kanigri Narsiah and PW 8 Baigari Chandraiah, who were taking tea in the ten shop. All these witnesses saw respondents 1 and 2 felling down the deceased by attacking him with axe and knife.

4. After the assailants had left the scene PW 6 sent word to PW 1 Malikarjun, son of the deceased. PW 1 came to the scene and after being informed about the occurrence he rushed to the police station at Toopran, about 20 k.m. away and gave a report Ex. P-1 at about 8.20 a.m. After registering a case and sending express reports to the concerned authorities PW 19 proceeded to the

scene of occurrence and conducted the investigation. During the inquest he examined PWs 5 and 6 and thereafter he examined other witnesses including PWS 7 and 8. The investigation was taken over on that evening by PW 20, the Inspector of Police.

5. Autopsy on the body of deceased Narasaiah was done by PW 15 Dr M. A. Hafees. He found 13 injuries on the dead body and he has opined that injuries 7, 8, 10 and 13 could have been caused by attack with an axe and injuries 1, 2, 5, 9, 11 and 12 could have been caused by attack with a knife and injury 6 was an abrasion. He has further stated that injuries 1, 9 to 11 and 13 were grievous ones and the victim would have died on account of shock and haemorrhage resulting from these injuries.

6. The respondents were absconding for a few days but eventually they were traced and arrested. The axe and knife alleged to have been used by them were recovered at their instance during the course of investigation.

7. In their statements the respondents pleaded innocence and denied the prosecution case against them, in its entirety.

8. As already stated the learned Sessions Judge accepted the evidence of the eyewitnesses and found accused 1 and 2 guilty as charged and convicted them accordingly. The High Court has, however, taken a different view and set aside the conviction and sentence awarded to the respondents. The High Court has held that PW 4's evidence was somewhat unnatural, that the evidence of PWS 5, 7 and 8 was open to doubt, that the conduct of PW 1 in going to the police station to give a report instead of reporting the occurrence to the local police patel roused suspicion, and the delay in the express FIR reaching the court was not properly explained. All these factors in the opinion of the High Court constituted grave infirmities in the prosecution case and hence it would not be safe to sustain the conviction and sentence awarded to the respondents. In accordance with that view the High Court has allowed the appeal.

9. The learned counsel for the appellant took us through the evidence of the eyewitnesses PWS 4 to 8 and the contents of Ex. P-1 and submitted that the High Court has not only failed to view the evidence in its proper perspective but it has committed a serious error in completely overlooking the evidence of PW 6 who by all accounts is the most important witness and whose testimony is thoroughly independent and disinterested.

10. On a careful consideration of the matter we find the grievance of the appellant's counsel to be well founded. The evidence on record fully establishes that deceased Narasaiah had been done to death near the tea stall of PW 6 i.e., only 21 feet away. Such being the case, PW 6 is the most natural witness who could have seen the occurrence. He has deposed that he was serving tea to PWs 7 and 8 in the tea stall and at that time he heard the summons of PW 5, who had just gone out from the tea stall after taking tea and at once he stepped out of the tea stall and saw the two respondents attacking the deceased with an axe and knife respectively. This witness, we find, belongs to a different religion and he is not a member of any faction in the village and as such he is a totally independent witness. He has sent word to PW 1 and also informed him as to who the assailants were. In the report Ex. P-1 which has been given without delay at the police station, the fact of PW 6 being an eyewitness has been clearly mentioned. PW 6 has been examined without delay i.e., during the inquest itself. In the cross-examination of PW 6 no material has been brought out to show that he is not a truthful witness or that he has any interest in the deceased or animosity towards the respondents so as to make him depose falsehood in the case. Curiously enough, in spite of the evidence of PW 6 being free of any blemish and being absolutely credible the High Court has not at

all adverted to his evidence in its judgment. On the other hand the High Court has only scrutinized the evidence of PWs 4, 5, 7 and 8 and given some trivial reasons for not giving credence to their testimony. Nowhere do we find any discussion about the evidence of PW 6 and much less any reasons being given for not accepting his evidence. This, in our opinion, constitutes a very serious infirmity in the judgment of the High Court and vitiates the judgment in its entirety.

11. We further find the High Court's judgment to suffer from several distortions in its perspective. To mention a few, the High Court has viewed with suspicion the conduct of PW 1 in going to the police station instead of the police patel to make a report. The High Court has failed to see that PW 1 would have been anxious to lodge a report about his father's murder with utmost expedition and hence he may not have wanted to waste time by giving a report to the police patel and them having the report sent to the police station. Likewise, the High Court has leveled criticism about the non-reference in Ex. P-1 to a knife being one of the weapons of attack without due consideration of the frame of mind in which PW 1 would have been and the fact that he was not an eyewitness to the occurrence. Another failing in the judgment is that the High Court has held that the prosecution has failed to prove adequate motive for the commission of the offence without bearing in mind the well settled rule that when there is direct evidence of an acceptable nature regarding the commission of an offence the question of motive cannot loom large in the mind of the court. Lastly, we find that the High Court has evolved a they of its own, without there being any material to support it, and premised that the occurrence must have taken place during darkness, and subsequently the respondents must have been implicated on account of suspicion.

12. As we have already stated we find the evidence of PW 6 to be unassailable. In the light of his convincing testimony the evidence of the other eyewitnesses PWs 4, 5, 7 and 8 also merit acceptance notwithstanding the minor discrepancies noticed in their evidence by the High Court. Learned counsel for the respondents had no good answer in regard to the grave failings in the judgment of the High Court but, nevertheless, he pleaded that having regard to the long interval between the acquittal of the respondents by the High Court and the hearing of the appeal, this Court may not interfere with the judgment of the High Court. We cannot accede to this request because the judgment of the High Court suffers from glaring and serious errors and an omission to correct it will lead to gross failure of justice.

13. We are, therefore, clearly of the view that the judgment of the High Court cannot be sustained. We accordingly allow the appeal and set aside the acquittal of the respondents and restore their conviction under Section 302 read with Section 34 of the Indian Penal Code and the sentence of life imprisonment awarded by the Sessions Judge. The respondents will surrender themselves to custody for undergoing the sentence of life imprisonment awarded to them.

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