

State of Andhra Pradesh

Vs

Gowthu Ranghunayakulu and Others

Criminal Appeal No. 12 of 1978

(B. C. Ray, A.P. Sen JJ)

19.11.1986

JUDGMENT

B.C. RAY, J. -

1. This appeal by special leave is against the judgment and order dated April 19, 1976 made by the High Court of Andhra Pradesh in the Referred Trial No. 2 of 1976 and Criminal Appeal Nos. 159, 168 and 169 of 1976 acquitting all the 7 accused who were convicted and sentenced by the Session Court, West Godawari Division at Elura, Andhra Pradesh in Session Case No. 71 of 1975.
2. The prosecution case in short is that on July 23, 1974 at 7.30 am the accused persons forming themselves into an unlawful assembly in the house of accused 1 and arming themselves with spears, sticks and crow-bars attacked the deceased while he was returning from the canal carrying water in what is locally known as "kavadi". When the deceased reached the house of accused 1, all the ten accused came from behind and accused 2 gave a blow with a stick on the back of the head of the deceased as a consequences of which he fell down on his back. The accused 1 speared the deceased on his face and legs, accused 5 poked the deceased on his right wrist with a crow-bar and accused 6 speared the deceased on his legs and hands. The rest of the accused then beat the deceased with the stick indiscriminately. The deceased cried "Bobu". This was heard by his wife (PW 5) from her house which is situated about 150 yards away. She immediately ran to the scene of occurrence and saw accused 1 to 8 and two others entering into the house of accused 1. PW 5 then sent intimation to her brother PW 2 who was working as labourer in a sugar factory through PW 8. PW 2 and others took the deceased to Bhimadole Police Station in a cart which is about 4 kms. away from their house and lodged the FIR, EX. P-1 wherein all the names of accused A-1 to A-4 and A-6 to A-8 as well as the nature of injuries inflicted on the person of the deceased were mentioned. This FIR was registered at 9.30 am and a case u/s 326 IPC was registered. Subsequently, the deceased was found dead on examination by the doctor, PW 12 at the Government Hospital, Eluru. The FIR was then altered to one u/s 302 IPC. The Inspector of Police made inquest of the dead body and the inquest report has been marked as Ex. P-5. All the 10 accused were charged u/s 147 IPC. The accused A-1, A-4, A-5 and A-6 who are armed with deadly weapons were also charged u/s 148 IPC and accused A-1 to A-10 were charged u/s 302 read with Section 149 IPC. They were all committed to the Court of Sessions.
3. The Sessions Judge after considering the entire evidence and also hearing the counsel for the prosecution as well as the defence found that accused A-1 to A-3 and A-5 to A-8 were guilty of the offence u/s 147 IPC and also u/s 302 read with Section 149 IPC. A-1, A-5 and A-6 were also held guilty u/s 148 IPC. The accused A-4, A-9, and A-10 were however acquitted of the offence u/s 147 IPC. Accused A-4 was also not found guilty of offence u/s 148 IPC. The accused A-1, A-5 and A-6

who were convicted u/s 302 read with Section 149 IPC were sentenced to death and they were directed to be hanged by their necks till their death subject to conformation by the High Court. A-3, A-7 and A-8 were convicted u/s 302 read with Section 149 IPC and they were sentenced to undergo imprisonment for life. A-2 was also convicted u/s 302 read with Section 149 IPC and he was sentenced to death and directed to be hanged by his neck till death subject to confirmation by the High Court. The accused A-1 to A-3 and A-5 to A-8 who are convicted u/s 147 IPC were sentenced to undergo rigorous imprisonment for one year. A-1, A-5 and A-6 were convicted u/s 148 IPC and they were sentenced to rigorous imprisonment for two years. All the above sentences were to run concurrently.

4. Against this judgment and order three criminal appeals being Criminal Appeal Nos. 159/1976, 168/1976 and 169/1976 were filed. These criminal appeals along with R.T. No. 2 of 1976 were heard by the High Court of Andhra Pradesh, Hyderabad and the learned Judge by his order dated May 5, 1976 acquitted all the accused of both the charges of rioting and murder levelled against them and set aside the convictions and sentences allowing all the appeals and rejecting this reference.

5. It is against this judgment and order the instant appeal on special leave was filed before this Court by the State. This Court granted special leave to appeal by its order dated January 11, 1978 and also ordered issue of bailable warrants against each of the accused persons in the sum of Rs. 10,000 with one surety to the satisfaction of Additional Sessions Judge, Eluru.

6. We have heard the learned counsel for both the parties and we are constrained to hold that the judgment passed by the High Court acquitting all the accused is not a proper judgment in accordance with the provisions of Section 354 of the Code of Criminal Procedure, 1973. The learned Judge has not at all considered and marshalled the evidences examined on behalf of the prosecution particularly the evidences of PWs 1, 3, 4, 6, and 7 who were eyewitnesses to the gruesome murder committed in the morning at about 7.30 am. The names of all the seven accused appeared in the FIR lodged by PW 2 in the police station at 9.30 am, Ex. P-1 and Ex. P-23 and P-24 dated July 23, 1974. The learned Judge did not formulate properly the points for decision and did not marshal the evidences on record and did not come to specific finding on each of the points for determination by recording specific reasons for arriving at the decision. It is really unfortunate that the learned Judge approached the case from wrong angle and without properly formulating the points for decision and without any proper appraisal of the evidences adduced by the prosecution to prove the guilt of the accused persons and also without adverting to the reasonings of the Sessions Judge, has perfunctorily come to the findings that the prosecution has failed to prove beyond doubt the case against the accused even though there are eyewitnesses PWs 1, 3, 4, 6 and 7 to the occurrence.

7. In our considered opinion, this Judgment is not in accordance with the mandatory requirements as laid down in Section 354 of the Code of Criminal Procedure. We therefore, set aside the judgment and order of acquittal passed by the High Court of Andhra Pradesh and remit the case back to the High Court, Andhra Pradesh for deciding the case in accordance with law on a proper appraisal and marshalling of the evidences on record as early as possible. The order of interim stay is vacated and bail bonds are cancelled. The records be sent to the High Court forthwith. The High Court will be free to consider whether the accused will be enlarged on bail.

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