

Desaji Wadia Samkaiah and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 357 of 1978

(M.M. Dutt, K. Jagannatha Shetty JJ)

04.02.1988

ORDER

1. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court whereby the High Court affirmed the order of the Sessions Judge convicting the appellants under Section 302/149 IPC and sentencing each of them to rigorous imprisonment for life.
2. Initially, there were 11 accused including the appellants. The prosecution case in brief was that the appellants and other accused attacked the deceased Sontireddy Venkata Reddy, a lecturer in a college at Warangal inflicting injuries on him to which he succumbed. All the accused including the appellants were prosecuted and tried by the learned Sessions Judge, Warangal on a charge of murdering the deceased Sontireddy Venkata Reddy. During the pendency of the criminal proceedings against the appellants and other before the learned Sessions Judge, accused 6 died and, consequently the proceedings against him abated. Learned Sessions Judge acquitted accused 7 to 11 but convicted the appellants and accused 3 and 4. On appeal, the High Court acquitted the accused 3 and 4 but maintained the convictions and sentences of the appellants. Hence this appeal.
3. Mr. G. Narashimulu, learned counsel appearing on behalf of the appellants has strenuously urged that in view of certain discrepancies between the statements of PWs 5 and 9 during the inquest and the FIR (Ex. P-1) the High Court should have disbelieved the prosecution case and acquitted the appellants. It is true that PW 5 in his statement made at the time of inquest only implicated accused 1, 3 and 5 and one brother-in-law of accused 6. Further it was stated by him that the accused were armed with iron rods and sticks with which they inflicted injuries on the deceased. The opinion of the doctor who had conducted post-mortem on the deceased was that the injuries could have been caused only with a blunt weapon. On the other hand, in the FIR (Ex. P-1) it was stated that accused 1, 2, 4 and 5 were armed with sticks with which the injuries were inflicted on the deceased. In view of the discrepancies, it is urged by the learned counsel that the High Court should have acquitted the accused. A similar contention was made before the High Court. The High Court however, besides these witnesses, has placed reliance upon the evidence of PW 2. It has been found by both the courts below that PW 2 was all along with the deceased and was an eye-witness of the incident. It is submitted on behalf of the appellants that the High Court should have disbelieved the evidence of PW 2 because he is a relation of the deceased. In our opinion this contention has not substance at all. It may be that PW 2 was a relation of the deceased but that did not preclude the High Court from placing reliance on his evidence.
4. Our attention has been drawn to the fact that the presence of PW 2 has not been mentioned by PW 5 at the inquest. In view of that fact, it is urged that the High Court should have held that PW 2 was not at all present and should have discarded his evidence altogether. We are unable to accept

this contention. It is not necessary that at the time of inquest PW 5 was required to make a statement as to who others were present during the occurrence. It may be an omission. But it does not follow from such omission that PW 2 was not present. The High Court and the learned Sessions Judge have found PW 2 to be a very trustworthy witness, and accordingly, were quite justified in placing reliance upon his evidence. The evidence of PW 2 finds corroboration from PW 6 so far as accused 1 and 2 are concerned. His evidence is also corroborated by PW 6, so far as accused 5 is concerned. The name of accused 5 appears in Ex. P-1 and PW 3 has also deposed about the participation of accused 5 in the crime. In the circumstance we do not think that we would be justified in interfering with the concurrent findings arrived at by the High Court as also the learned Sessions Judge.

5. For the reasons aforesaid, the appeal is dismissed.

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