

Guvala China Venkatesu and Another

Vs

State of Andhra Pradesh

Criminal Appeal No. 453 of 1979

(K.N. Saikia, M.M. Punchhi JJ)

05.12.1990

ORDER

1. Guvala China Venkatesu and Bella Pedda Narayana were the appellants in this appeal. Bella Pedda Narayana is said to be dead and his appeal has, therefore, abated. The first appellant, who was accused 2, stands convicted under Section 302/34 IPC and sentenced to life for having committed the murder of Lekireddy Kondareddi. The learned courts below relied on the evidence of PWs 1, 2 and 4. Mr Madhava Reddy, learned counsel for the appellant mainly assails the evidence of PW 4, the Sanitary Inspector, R. Subbareddy. The murder was committed on December 7, 1975 on the 2nd road in Anantapur town at about 8 a.m. PW 4 categorically said that he went to the cycle shop of PW 3 J. Venkataramana which was situated at about 18 yards from the place of occurrence, for getting his cycle tyres inflated. He fully corroborates PW 1 and PW 2. Before the PW 1 accompanied the deceased but fell few paces behind to ease himself. PW 1 has given a graphic description of how the accused persons came armed with axes and sticks from the nearby lane and attached the deceased on the 2nd road of Anantapur. He categorically deposed that the appellant cut the deceased on the back side of the head with the sharp portion of his axe. PW 2 also said that the appellant cut the deceased on the back side of the head with his axe. Thereafter as the deceased fell down, others including the appellant surrounded and assaulted the deceased with their weapons. PW 2 happened to be present on the payal of the nearby house of PW 6. PW 4 deposed that the man, whom he later identified at the TIP, cut the back portion of the head of the deceased with his axe. When the deceased fell down face downwards all the assailants surrounded and hit the deceased 4 or 5 times. His deposition is wholly corroborative of PW 1 and PW 4. As a result, we find the wholly corroborative evidence of PWs 1, 2 and 4.

2. The following are the 12 injuries on the body of the deceased :

- (1) An incised wound 3" x 1/4" x bone deep behind left ear closely. Transverse on left mastoid region.
- (2) An incised wound 3" x 1/2" x bone deep blood clots present transverse 1" above injury No. 1.
- (3) An incised wound 3" x 1/4" vertical bone deep at the posterior ends of injury Nos. 1 and 2 blood clots present.
- (4) An incised wound 3" x 3/4" bone deep 1" above injury No. 2 brain matter protruding from the injury communicated fracture of temporal and occipital bones seen through the wound.

- (5) An incised wound 4" x 1/2" x bone deep 1/2" above injury No. 4. Brain matter protruding from the injury. Communicated fracture of occipital bone.
- (6) An incised wound 3" x 1/2" transverse bone deep extending to left eyelids.
- (7) A contusion 2" in diameter over left side of forehead extending to left eyelids.
- (8) A contusion 3" in diameter on right parietal region with an abrasion over it.
- (9) An abrasion 1" x 1/2" on right side of forehead.
- (10) An abrasion 1" in diameter over left knee on front.
- (11) An abrasion 2" x 1" over right knee on front.
- (12) Fluid blood discharge from left ear.

3. The doctor has specifically said that the injury Nos. 4, 5 and 8 could be fatal. From the nature, situs and description of the injury Nos. 4, 5 and 6 including the fractures on their impact, it appears that at least any one of these injuries could have been caused by the appellant. There is no specific statement as to whether any of the other injuries was also caused by the appellant, but there is definite evidence that after the deceased fell down face downwards, the appellant and other assailants continued to hit him with their weapons.

4. Mr Reddy assails the evidence of PW 4 mainly submitting that he stated that he rang up the police station before leaving the 2nd road and that could have been the first information. The Police Sub-Inspector was categorically asked about this fact and his reply was that the telephone call was after the complaint on the basis of the FIR was already received. In view of this while the presence of PW 4 at the place of occurrence was proved the period of time i.e. 15 minutes within which he claimed to have telephoned might not have been accurate. The complaint Ex. P-1 was promptly lodged on the basis of the FIR. Under the circumstances, to our mind, there could be no time for embellishment, and there is no ground for disbelieving PW 4. His presence there could not be belied in cross-examination. This being the position, he having wholly corroborated PWs 1 and 2, whose presence also could not be belied, we find no infirmity in the High Court arriving at the conclusion that PW 4's corroboration was material in relying on the evidence of PWs 1 and 2. Medical evidence also corroborated them. The admission as to partisanship is, therefore, of no avail.

5. Mr Reddy lastly submits that the appellant who was 55 on the date of occurrence and about 70 years by now, may deserve a lesser sentence. We have duly considered it but we are not inclined to modify the conviction. We find that the prominent feature of the murder, indeed the only feature, is its ruthless, unrelenting, determined vindictiveness. Every blow seemed to say : 'you shall die - you shall not live'. No doubt in penology the trend from punitive to therapeutic attitude is rightly on the increase, but the scope of the latter is limited in such a crime, and the punitive philosophy and social alarm is difficult to be neglected or abandoned. As Stephen said [A History of the Criminal Law of England (1883), pp. 81-82.] :

"The sentence of the law to the moral sentiment of the public in relation to any offence is what a seal is to hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment.... The infliction of punishment by law gives definite expression and a solemn ratification and justification to the hatred which is

excited by the commission of the offence, and which constitutes the moral or popular as distinguished from the conscientious sanction of that part of morality which is also sanctioned by the criminal law. The criminal law thus proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it. This close alliance between criminal law and moral sentiment is in all ways healthy and advantageous to the community."

6. Under the above circumstances, we do not find any error in the impugned judgment. This appeal is accordingly dismissed. He shall surrender and serve out the sentence.

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