

Nallamsetty Yanadaiah and Others

Vs

State of A. P.

Criminal Appeal No. 117 of 1987

(K. Jayachandra Reddy, G. N. Ray JJ)

16.09.1992

JUDGMENT

1. A rioting, which was of grave nature, took place on 14-6-1981 between 2- 4.30 p.m. at Yerraguntakata, Gyarrukotta village in Cuddapah District. During the course of the rioting four persons died and several witnesses, including PWs 1, 2, 7-16, 18, 19 and 20 were injured. Fiftyone accused were charge-sheeted and tried. The learned Sessions Judge convicted 10 of them for the offences of murder and sentenced them to undergo imprisonment for life. They were also convicted under various counts, including being the members of unlawful assembly, for causing several PWs injuries. Learned Sessions Judge acquitted A-11, in particular, accepting plea of alibi set up by him. The convicted accused preferred an appeal. The State also preferred an appeal, except against A-11. The High Court in a detailed judgment accepted the evidence of the injured witnesses to the incident who spoke about the presence and participation of some of these appellants and in this view of the matter, the High Court confirmed the convictions of A-2, A-7 and A-34 under S. 302, IPC and also convictions of A-3, A-5, A- 18, A-22 and A-48 were confirmed by the High Court under Ss. 302/149, IPC. The convictions of these accused on other charges were also confirmed. The rest of the appellants were acquitted by the High Court. A-18 has not filed any appeal before us. The other convicted accused, A-2, A-3, A-5, A-7, A-22, A-34 and A-48 have preferred this appeal.

2. The prosecution case is that there were long-standing factions in the village between the two groups, who belong to two different dominant castes. Several criminal cases have been instituted against both the factions; security proceedings were also pending against them. The relationships between the two groups became more strained. On 14-6-1981, i.e. on the day of the incident, PW-3 went to the tea-stall run by PW-6 at about 2 p.m. The first deceased came to PW-6 for purchasing Bidies. Suddenly, A-34 came from behind and stabbed him on the back with a dagger. The first deceased fell down. He was again stabbed by A-34 and this was witnessed by PWs. 4 and 5. After sustaining the injuries, the first deceased died. Seeing this PWs. 4 and 5 got afraid, went inside PW 5's house and closed the doors. PW-7, the wife of the 1st deceased rushed to the tea-stall. She saw her husband dead. Meanwhile, some of the accused armed with sticks came there and it is alleged that PW-7 was injured and occurrence picked up momentum and it is stated that all the accused met and formed themselves in an unlawful assembly. A-1 to A-4, A-7 and A-12 were carrying guns, A-10 and A-11 were carrying spears and the others were carrying sticks and stones. A-1 opened fire from the lane upon the Yadavas group who were standing in front of Raghavaiah's house. During the course of firing, PW-2 also got injured. A-7 fired another gun shot and hit the third deceased. The fourth deceased and his wife (PW 20) were in their hut which was being used as a kitchen, across the road from their main house. PW-18 and PW-19 also received injuries caused by A-48 and

A-5 respectively. PW-18 and PW-19 stood near the window of their house and they saw a group of Balijas coming towards their house. A-1 fired the gun causing a hole in the door. A-6 speared through this hole which struck the abdomen of the fourth-deceased. After this attack, the accused left the place. An FIR was given to the police by PW-1 at about 7 p.m. The Sub-Inspector (PW-37) received the information and the Deputy Superintendent of Police sent the injured witnesses to the Government hospital where they were examined by the doctors. The inquest was held on the dead bodies of the four deceased persons. The accused were arrested on several dates. A charge-sheet was also laid. On examination under S. 313, Cr. P.C. the accused denied the offence and A-11 particularly put forward a plea of alibi. He has submitted that he was at Tirupati for attending a conference under the auspices of TTD. In support of his alibi, he examined PW-1.

3. The prosecution examined 37 witnesses. The trial Court after scrutinising the evidence of these eye-witnesses and applying the well known tests to such evidence of the interested witnesses convicted 10 accused mentioned above for the offence of murder. The Sessions Court also convicted some other accused for minor offences under Ss. 324, 325, IPC etc. The Sessions Court also accepted the plea of alibi of A-11 and acquitted him.

4. As already mentioned above, the High Court confirmed the convictions of A-2, A-3, A-5, A-7, A-18, A-22, A-34 and A-48 under Ss. 302/149, IPC. The convictions of some other accused for minor offences were also confirmed. Of course, A-18, as mentioned above, is not an appellant before us. Learned counsel for the appellant submits that the witnesses are all partisans and it would not be safe to accept their evidences, particularly, when they did not hesitate to implicate A-11 falsely, whose alibi has been accepted by both courts below. Learned counsel also submits that the eye-witnesses were all interested witnesses and they tried to implicate many innocent persons and that it would be highly unsafe to accept their evidence. We see no substance in his submission. Here is a case where a large number of persons armed with deadly weapons, like guns and other cutting weapons, participated in the occurrence during which four persons were killed and many of the witnesses who were present were also injured. It may be that they are all interested witnesses. But on that ground alone their evidence cannot be rejected. Their evidence is to be subjected to close scrutiny. As a matter of fact, the learned Sessions Judge, as well as the High Court have considered evidence of each of the witnesses with great care and caution. Both the courts below have acquitted such of those accused against whom the Court felt the prosecution case is not good beyond all reasonable doubt.

5. Now coming to the appellants, the injured witnesses have specifically stated in their evidence that they have caused the death of D-1, D-3 and D-4. So far as D-2 is concerned, nobody was convicted for want of satisfactory proof. The remaining accused, namely A-3, A-5, A-18, A-22 and A-48 were also convicted under Ss. 302/149, IPC on the ground that their presence is established by the fact that they caused injuries to the witnesses. According to the prosecution evidence, A-5 caused injuries to PW-19, A-22 caused injuries to PW-20 and A-48 caused injuries to PW-18 and A-3 caused injuries to PW-11. For the purpose of application of S. 149, IPC, the prosecution has to prove the presence and participation in an unlawful assembly. The presence of these accused was, mentioned consistently by all the witnesses. In a case of this nature, particularly, when the occurrence has taken place in a village, several villagers might have gathered and therefore, the further test is whether the participation has been proved so that their being members of an unlawful assembly can be accepted safely. In that view of the matter, the Courts below accepted the evidence of the injured witnesses who consistently deposed that these accused who were convicted under S. 302/149, IPC, were present and also participated in the occurrence by inflicting injuries on PWs. 11, 16 and 20. This view of the Courts below is quite consistent with the settled principles in respect of

application of 149, IPC.

6. The learned counsel for the appellant, however, submitted that so far as A-48 is concerned, his name was not mentioned in the FIR nor even during the inquest. As mentioned above, A-48 is said to have caused injuries to PW-18. The High Court examined this aspect and held that PW- 18 was shifted to the hospital and his statement was recorded by the Magistrate, which, at that time, was treated as "dying declaration" and in that statement it was mentioned that A-48 attacked him and caused injuries and, therefore even though his name was not mentioned in the FIR or during the inquest it does not, in any manner, affect the veracity of evidence of PW 18 and A-48's presence and participation, could be accepted.

7. In a case of this nature, one of the tests is whether the names of the accused who were sought to be convicted have been mentioned in the earliest report. No doubt in the statement recorded by the Magistrate PW-18 has mentioned that A-48 attacked him with the stick and some others inflicted injuries on other parts of the body, including the head. The doctor, who examined PW-18 found two injuries on the head. But, in the Court, PW- 18 improved his version and stated that A-48 alone inflicted injuries on the head. Therefore, there is a clear prevarication and that apart, PW-18 is admittedly partisan and interested witness and the possibility of implicating A-48 at a subsequent stage when the same is not already given cannot be ruled out. The fact remains that PW-18 also implicated A-11 whose alibi is accepted. Therefore, we think it is not safe to convict A-48 on the lone testimony of PW-18, particularly when his name was not mentioned either in the earliest report or during the inquest. In the result, convictions and sentences of A-48 are set aside. Convictions and sentences of the other appellants are confirmed and their appeals are dismissed. The appellant who are on bail shall surrender. We, therefore, allow the appeal in respect of A-48 and dismiss in respect of others. Bail bond, if any, in respect of A-48 stands cancelled. With the above modifications, the criminal appeal is disposed of. Order accordingly.

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