

Mullagiri Vajram and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 483 of 1980

(Kuldip Singh, N. M. Kasliwal JJ)

15.10.1992

JUDGMENT

KASLIWAL, J. –

1. Twelve person were challenged for the murder of Nethala Veeraswamy, resident and Sarpanch of Village Ramaraogudem in Eluru Taluq, West Godavari District (A.P.) in the night of December 31, 1977. Learned Sessions Judge, West Godavari Division, Eluru tried the case and relying on the evidence of PWs 1, 2 and 7 in toto and the evidence of PW 3 to some extent convicted all the accused person for the offences charged under Section 302 read with Section 149 IPC and awarded each one of them sentence of imprisonment for life and other minor terms of imprisonment for other offences. On appeal the High Court set aside the conviction and sentence of seven accused persons, namely, Dasari Bhaskara Rao (A 4), Kali China Krishna (A 5), Namburi Lakshmana (A 8), Namburi Ramulu (A 9), Namburi Prasada Rao (A 10), Mada Govardhana Rao (A 11) and Kali Kamaka Rao (A 12). The High Court confirmed the conviction of the remaining five accused persons Mullagiri Vajram (A 1), Mullagiri Yesupadam (A 2), Dasari Bhima Rao (A 3), Mada Lakshmandas (A 6) and Gadi Abraham (A 7) under Section 302 read with Section 149 IPC and sentenced them to imprisonment for life. The High Court further held that as these accused had been sentenced for the main offence under Section 302 read with Section 149 IPC there was of no need of separate sentence under Sections 148 and 147 IPC.

2. The five accused A 1, A 2, A 3, A 6 and A 7 have come before this Court in appeal against the order of the High Court by grant of special leave. Mada Lakshmandas (A 6) expired during the pendency of appeal before this Court as such the appeal filed by him was dismissed as having abated by order dated April 8, 1992. We are now concerned in this appeal with the four accused appellants A 1, A 2, A 3 and A 7.

3. We have gone through the judgment of the lower courts and have perused the record and have considered the arguments advanced by learned counsel for the parities. The High Court has considered the prosecution evidence in detail and has placed reliance on the statements of PWs 1, 2, 3 and 4 as eyewitnesses of the incident. The High Court has placed implicit reliance on the testimony of PW 2 who was a clerk working in the panchayat office of Ramaraogudem and had accompanied the deceased in an autorickshaw and had seen the incident. We find no infirmity in the statement of PW 2 and the High Court has rightly placed reliance on his evidence.

4. Learned counsel for the accused persons submitted that even if the statement of PW 2 is taken to be correct, no offence is made out so far as accused (A 3) is concerned. Learned counsel in this regard submitted that PW 2 in the cross-examination has admitted that he did not state the name of

A 3 in his statement recorded under Section 164 CrPC. It was also submitted that though PW 2 stated that he had given the name of A 3 in his statement recorded at the inquest but the name of A 3 does not find mention in Ex. D 7, the statement of PW 2 recorded at the inquest. We see force in the aforesaid contention. A perusal of the statement of PW 2 shows that he did not make a mention of the name of A 3 in his statement recorded under Section 164 CrPC and also in his statement Ex. D 7 recorded at the inquest. In view of these circumstances the accused A 3 is also entitled to the benefit of doubt.

5. It was next contended by learned counsel on behalf of the accused A 2 and A 7 that PW 2 in the cross-examination admitted that after the incident he had gone to the police station seven or eight times. He had gone to the police station as he was asked by the police. He also admitted that at that time the accused persons were in police lock-up. On the basis of the aforesaid statement of PW 2 it was contended that when PW 2 had gone to the police station seven or eight times after the incident the possibility of his seeing the accused (A 2) and (A 7) in the police station cannot be ruled out. It was thus contended that any identification parade held on January 25, 1978 and January 26, 1978 has no value as PW 2 had already seen the accused person in the police station. We find no force in this contention. Exs. P-16 and P-17 are the proceedings of identification parade held on January 25, 1978 and January 26, 1978 respectively. A perusal of these documents shows that PW 2 Garapati Krishnavatharam had himself stated that he had prior acquaintance with Mullagiri Yesupadam (A 2) and Gandhi Abraham (A 7). The High Court has examined this aspect of the matter and has rightly arrived at the conclusion that PW 2 in his evidence has stated that he came to know the names of the accused from the children of the deceased and it was not unnatural for a person, who resides in a village for a period of two months and especially when they reside opposite to the residence of the president (deceased) in whose office he was working as a clerk to know the names of the person residing nearby. PW 2 himself admitted at the time of holding the identification parade that he had prior acquaintance with A 2 and A 7. PW 2 is a witness of sterling worth and both the trial court and the High Court have placed reliance on his testimony. He had identified A 1, A 2 and A 7 in the Court. Their conviction is not based on the identification parade but on the statement of PW 1 and PW 2 made during the trial as eyewitness.

6. It is established beyond any manner of doubt that there were two factions and long standing rivalry in between the two groups in the village. The accused persons belonged to the group headed by A 6, A 7 and the deceased was the leader of the other group. Nethala Veeraswamy the deceased was given merciless beatings and was done to death in the midnight of December 31, 1977. He was found to have 26 external injuries as recorded in the autopsy of his dead body conducted by the doctor. It has also been found established by the learned trial court as well as by the High Court that A 1 inflicted injuries by an axe and A 2 by a spear and A 7 was among the other persons who inflicted injuries by a stick. It has also come in the evidence of PW 19, Inspector of Police that the accused person had absconded and on January 9, 1978 on information by 5.00 a.m., he along with mediators visited Ramaraogudem and the absconded accused were hiding in the house of A 7. He surrounded the house with his staff, guarded the house and in that house he found the twelve persons against whom the case was challanced. It has also been proved by the prosecution that A 7 was the leader of the rival faction against the deceased. Thus we find that there is no infirmity at all in the reasoning and conclusion arrived at by the High Court so far as accused A 1, A 2 and A 7 are concerned.

7. In the result we allow the appeal so far as Dasari Bhima Rao (A 3) is concerned and he is acquitted of all the charges levelled against him. His bail bonds shall stand discharged. The appeal filed by Mullagiri Vajram (A 1), Mullagiri Yesupadam (A 2) and Gandhi Abraham (A 7) is

dismissed. They shall surrender to their bail bonds and serve out the sentence awarded to them by the High Court.

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