

Thathanna and others

Vs

State of A.P.

Criminal Appeal No. 333 of 1982

(K. Jayachandra Reddy, N. Venkatachala JJ)

06.10.1993

JUDGMENT

1. Thathanna, Gopal and Gopalappa. (original accused Nos. 3, 4 and 7) are the appellants. They along with 27 others were tried for offences punishable under Ss. 147, 148, 302, 302 read with 149 and 324, IPC. The Trial Court acquitted all of them. The State preferred an appeal and a Division Bench of the High Court after reappreciating the evidence of the eye-witnesses and subjecting the same to a close scrutiny confirmed the acquittal of the other accused but convicted the present appellants only under S. 326, IPC and sentenced each of them to undergo 7 years' Rigorous Imprisonment.

2. The prosecution case is as follows. There are three deceased in this case and some injured witnesses. All of them belonged to Village Narasapuram in Anantapur District. The deceased Hanumanthappa became the Vice-President of Local Panchayat and he had been residing with his family in Kottam erected by him in his garden. One Rajasekhatareddy was the successful bidder for sale of arrack. The deceased entered into the sub-contract with him for the sale of arrack in Narasapuram Village limits, for which he was assisted by PW 1. A3 and some other accused were desirous of obtaining the sub-contract. There was bitter enmity between the two groups. A day prior to the occurrence i.e. on 12-10-78, PW 1 and the deceased went to Kalyandrug to talk to the main contractor and to apprise him about the challenges made by A3, A6 and 22. There was a quarrel. In the course of the said quarrel A3 declared that if Hanumanthappa returned to the village he would be killed. On the following day, namely, 13-10-78 he came to know that there was illicit distillation detrimental to the contract held by Hanumanthappa. The deceased and PW 1,3,4,8 and 9 gathered together and proceeded to Beluguppa hills where the illicit distillation was said to be going on. That was on the night of 12-10-78. In the morning of 13-10-78 PW 1, 3,4, 8 and 9 along with three deceased got up and were proceeding to the fields. PW 1 and 4 also joined them. While so, accused 1 to 8 came opposite to them raising cries. When the deceased, PW 1, 4, 7, and 8 reached the field they were chased and were attacked by the accused persons who were armed with deadly weapons like axes and sticks. In the course of the same occurrence the other two deceased persons, namely, Hanumantharayudu and Hanumanthudu were also done to death. PW 3, 8 and 9 also received injuries. PW 1 gave a report Exh. P1. PW 15 registered the crime and along with the Constables reached the scene of occurrence in the night. The Inspector of Police came into the scene later as he was away to Anantapur in connection with the 'Band obast Duty' of the Village. The injured were taken to the Hospital and they were treated and the three dead bodies were also sent for post-mortem. The doctor found several incised injuries on all the three dead bodies. PWs 3, 8 and 9 were medically treated and the doctor who examined them found several lacerated wounds and contusions which could have been caused by blunt weapons. The accused were arrested and after completion of the investigation the charge was framed. The prosecution mainly relied on the

evidence of PWs 3, 8 and 9, the injured witnesses and also on the evidence of PWs 1, 2 and 4 who witnessed the occurrence. For the purpose of the present appeal it may not be necessary to consider the evidence of other witnesses.

3. The Trial Court acquitted all the accused holding that the eye-witnesses including the injured witnesses have given different versions and to a large extent they differed with the version given in the First Information Report and to some extent the medical evidence also does not support the testimony regarding the alleged crime. In the appeal against the order of acquittal the High Court considered the evidence of PWs 1, 4 and 8 in detail. In view of the discrepancies and the omissions, the High Court did not find it safe to convict any of the accused for inflicting injuries on PWs 3, 8 and 9 themselves. While considering the same aspect the High Court has taken into consideration the medical evidence and the nature of the weapons and the injuries. The High Court has given the benefit of doubt to the acquitted accused.

4. It may be mentioned at this stage that the High Court, however, taking into consideration the broad circumstances, held that it was a free fight and in that view the High Court was not prepared to hold that there was an unlawful assembly but it proceeded to consider the case of individual accused on the basis of the part played by them. The High Court in the first instance has taken the evidence of PW 3, the injured witness into consideration. The High Court also held that PW 2 is an independent witness. Similarly the High Court considered the evidence of PWs 8, 9 and other two injured witnesses. After considering the evidence of PW 3 in the light of the earlier statement, the medical evidence and with reference to the evidence of PWs 1, 2 and 4, the High Court felt that the part played by A3 alone could be accepted in respect of the attack on the first deceased. Likewise the High Court considered the evidence of PWs 3, 8 and 9 who spoke about the attack on the 3rd deceased and there again after a close scrutiny held that the parts played by A4 and 7 could be accepted in view of the fact that the other eye-witnesses also corroborated their evidence. In that view of the matter the High Court gave the benefit of doubt to other accused but held that A4 and 7 should be held liable for their individual acts in respect of the attack on the 3rd deceased. Ultimately the conclusion reached by the High Court is to the effect that there was a free fight and the same was witnessed by a number of witnesses; among whom some were injured and the individual acts only should be taken into account after the close scrutiny and after such an exercise the prosecution has proved the presence and participation of A3, 4 and 7, namely, the appellants, in respect of the attack on the deceased 1 and deceased 3. The High Court, however, took the view that since the injuries inflicted by these three accused are only of grievous nature and that those injuries were not responsible for the death of the deceased persons they should be convicted under S. 326, IPC only.

5. Shri K. Madhava Reddy, learned senior counsel submits that it is highly unsafe to convict these three appellants alone for the offence of causing grievous hurt. His further submission is that the evidence of these three injured witnesses has not been accepted in respect of the attack on themselves by other accused and that if that is the position it will be highly unsafe to rely on their evidence to convict these three appellants who are alleged to have inflicted some injuries to these two deceased persons.

6. Having gone through the judgment of the High Court, we do not see any reason to come to a different conclusion and we are not able to agree with the learned counsel that the scrutiny of evidence done by the High Court is in any manner unsound. The evidence of A3, 8 and 9 though is not accepted in respect of their own assailants but the fact that the JUDGMENT The appellant was tried for an offence of causing the murder of Sunder. The trial Court acquitted him of the charges under Ss. 302 and 307 of the I.P.C. occurrence has taken place is accepted and that in respect of

these appellants the other witnesses have also consistently spoken regarding the parts played by the three appellants. The nature of the injuries inflicted by these three accused to that extent is corroborated by medical evidence and also spoken: to by the other eye-witnesses consistently and the same has been accepted. For all these reasons we see no ground to interfere. The appeal is accordingly dismissed. Appeal dismissed.

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