State of A. P.

Vs

Thakkidiram Reddy and Others

With

Edla Bhoom Reddy

Vs

State of A.P.

Criminal Appeals No. 458 of 1996

(D. P. Wadhwa, M. K. Mukherjee JJ)

11.08.1998

JUDGMENT

M. K. MUKHERJEE, J. -

1. Special leave granted in SLP (Crl.) No. 4429 of 1995, limited to the nature of offence.

2. In Sessions Case No. 552 of 1992, the Additional Sessions Judge, Karim Nagar, indicted twenty-one persons for lurking, house trespass, rioting, murder and other allied offences. While acquitting ten of them, the trial Judge convicted the other eleven (who were arrayed as A-1 to A-11 respectively in the trial court and hereinafter will be so referred to) under Sections 148 and 302/149 IPC. Besides, A-1 to A-3 were convicted under Section 457 IPC, A-4 to A-11 under Section 447 IPC and A-3 and A-4 under Section 324 IPC. Against their convictions and sentences, A-1 to A-11 preferred an appeal before the High Court which was disposed of by setting aside the convictions of A-2 to A-11 under Sections 148 and 302/149 IPC and maintaining all other convictions. Assailing the judgment of the High Court, the State of Andhra Pradesh has filed an appeal - besides the appeal filed by A-1 - against the acquittal of A-2 to A-11 of the charges under Sections 148 and 302/149 IPC wherein leave to appeal has been granted limited to the acquittal of A-2 to A-5 and A-9. Both the appeals have been heard together and this judgment will dispose of them.

3. The prosecution case, in brief, is that in the intervening night of 10-8-1990/11-8-1990, at or about 1 a.m., all the accused persons formed themselves into an unlawful assembly armed with crowbars, sticks and other deadly weapons and descended upon the house of Gankidi Mohan Reddy (the deceased) in Thimmapur Village. They broke open the door of the house and dragged him into its front yard. When his wife Bhagya Lakshmi (PW 2) and his brother Gankidi Narsimha Reddy (PW 3) intervened, A-3 beat the a former and A-2 the latter, both with sticks. Meanwhile, the deceased had extricated himself from the clutches of the miscreants and tried to run away but he was apprehended by them and again brought to the front yard. There A-1 beat him with a plough-rod (nagatipale), A-2 with a crowbar and A-3 and A-5 with sticks. When the parents of the deceased intervened, A-1 and A-4 beat them also. Thereafter the other accused persons started beating the

deceased. Gankidi Narsimha Reddy, a cousin of the deceased, then came to his rescue, but he was also caught hold of and beaten up. The miscreants then left the place. All the injured persons were taken to Government Hospital, Karim Nagar, in a tractor where their injuries were attended to. However Gankidi Mohan Reddy succumbed to his injuries at about examination. He then went to the scene of offence, got it photographed and seized some bloodstained earth, two pairs of slippers, two crowbars and some broken sticks therefrom. In the course of investigation, he arrested the accused persons and pursuant to the statements made by some of them, recovered some crowbars and sticks. On completion of investigation, he submitted charge-sheet against them.

4. The motive that was attributed to the accused for committing the offences was that there was a long-standing enmity between them and the family of the deceased. According to the prosecution, in the year 1982, the deceased, who was the Sarpanch of Thimmapur Village, did not permit some relations of A-2 and A-3 to join their services even though they got appointments as carobar and sweeper in the Gram Panchayat under orders of the District Panchayat Officer. This enraged A-2 and A-3 and they assaulted the deceased. Three days later, when a panchayat was held over the issue, the two groups fought with each other for which cases were registered against both. Later on, there was a matrimonial dispute between the cousin of A-1 and the daughter of one of the followers of the deceased. Following that dispute, the relatives of the girl beat her husband, her father-in-law and A-1 for which a case was registered. It is further alleged that A-12 usurped the house of one Fakir which was unauthorisedly built on government land and the deceased, as the Sarpanch, got a resolution passed for its demolition. He got a similar resolution passed when A-13 constructed another unauthorised house. Owing to such bitter enmity, the accused persons conspired to do away with the deceased and pursuant to that conspiracy, the committed the crime in question.

5. The accused persons pleaded not guilty to the charges levelled against them and contended that they were falsely implicated.

6. In support of its case, the prosecution examined 15 witnesses but no witness was examined on behalf of the defence. Of the witnesses examined, PWs 1, 2 and 3 and two of their neighbours, namely Gankidi Laxma Reddy (PW 4) and Bapu Reddy (PW 5), figured as eyewitnesses. PWs 1, 2 and 3 narrated the prosecution case detailed earlier and also spoke about their long-standing enmity with the accused; and PWs 4 and 5 fully supported their version of the incident. The trial Judge discussed the evidence of the above five witnesses threadbare in the light of the arguments canvassed on behalf of the defence against its acceptance and held that so far as the place and time of offence and the overt acts attributed to them, there were no material discrepancies except one or two omissions. The trial Judge found that the evidence of the eyewitnesses was corroborated by the evidence of PW 12 who held post-mortem examination upon the deceased, and of Dr. Raghavaiah who examined PWs 1, 2 and 3 and Gankidi Narsimha Reddy, the cousin of the deceased (not examined) and found injuries on their persons. The trial Judge further found that the FIR was promptly lodged by PW 1 and it contained the substratum of the prosecution case. In spite of such findings, the trial Judge gave the benefit of doubt to A-12 to A-21 as their names were not mentioned in the FIR.

7. The High Court virtually confirmed all the findings of the trial court in all respects but set aside the convictions of A-2 to A-11 of the offences under Sections 148 and 302/149 IPC with the following observations :

> "The omnibus statement about the culpability of the accused in the testimony of the prosecution witnesses would in the circumstances of the case have to be considered

only in the light of specific overt acts attributed to the accused and as may be corroborated by medical evidence. Therefore, we find it difficult to accept that all the appellants were members of the unlawful assembly with the object of committing the offence. In the circumstances, we hold that it is highly unsafe to apply Section 149 and make every one of them constructively liable. We therefore have no hesitation in dismissing the prosecution case against the appellants on the charge under Section 149 IPC. Accordingly, the conviction of all the appellants accused under Section 149 IPC is set aside.

Having rejected the contention that the appellants were members of an unlawful assembly, it would be equally unsafe to apply Section 148 of IPC on the basis of omnibus statements made by the prosecution witnesses which is not corroborated by medical evidence. Accordingly, the conviction of all the (appellants) accused under Section 148 IPC is set aside."

In upholding the conviction of A-1 for the murder, the High Court observed that all the five witnesses consistently deposed that A-1 beat the deceased with a stick meant for ploughing called nagatipale on his head and the doctor (PW 12) opined that the victim died of the head injury.

8. We have carefully gone through the entire evidence on record and the judgments of the learned courts below and heard the learned counsel for the parties at length.

9. Before considering the factual aspects of the case, it will be necessary to advert to a question of law relating to the validity of the trial raised by Mr. Arunachalam, the learned counsel appearing for A-2 to A-5 and A-9. He contended that the charges were not framed against the accused persons in accordance with Section 211 of the Code of Criminal Procedure, in that, in the charge framed under Section 148 IPC, though it was alleged that they were the members of an unlawful assembly, it was not mentioned what its common object was. Besides, he contended, a charge under Section 302 IPC simpliciter was framed against all the accused persons and not with the aid of Section 149 IPC for which they were convicted by the trial court. He submitted that an accused is entitled to precisely know the exact nature of the charge brought against him. According to him, unless he has this knowledge, he will be prejudiced in his defence, particularly in a case - as the present one - where he is sought to be prosecuted for acts not committed by himself but by others with whom he is in company. It is undoubtedly true that the charges suffered from the infirmities pointed out by Mr Arunachalam but the question is whether the trial, and, for that matter, the convictions recorded against the accused were vitiated thereby.

10. Sub-section (1) of Section 464 of the Code of Criminal Procedure 1973 ("Code" for short) expressly provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Sub-section (2) of the said section lays down the procedure that the court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is Section 465 of the Code; and it lays down that no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that court, a failure of justice has in fact been occasioned. It further provides, inter alia, that in determining whether any error, omission or irregularity in any

proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

11. This Court in Willie (William) Slaney v. State of M.P. (AIR 1956 SC 116 : (1955) 2 SCR 1140) elaborately discussed the applicability of Sections 535 and 537 of the Code of Criminal Procedure, 1898 which correspond respectively to Sections 464 and 465 of the Code, and held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused a had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Viewed in the context of the above observations of this Court, we are unable to hold that the accused persons were in any way prejudiced due to the errors and omissions in the charges pointed out by Mr. Arunachalam. Apart from the fact that this point was not agitated in either of the courts below, from the fact that the material prosecution witnesses (who narrated the entire incident) were cross-examined at length from all possible angles and the suggestions that were put forward to the eyewitnesses we are fully satisfied that the accused persons were not in any way prejudiced in their defence. While on this point we may also mention that in their examination under Section 313 of the Code, the accused persons were specifically told of their having committed offences (besides others) under Sections 148 and 302/149 IPC. For all these reasons we reject the threshold contention of Mr. Arunachalam.

12. Coming now to the facts of the case, it cannot be gainsaid that since the incident took place in the house of the deceased at the dead of night, PWs 1, 2 and 3, who were members of his household, were the most natural and probable witnesses. Further, the injuries sustained by them on that night leaves no room for doubt that they were present when the incident took place. As regards PWs 4 and 5, their claim that they saw the incident cannot also be doubted for they were the next-door neighbours of the deceased. The evidence of the above five witnesses, so far as it relates to the manner in which the incident took place is consistent and cogent and does not suffer from any infirmity. On the contrary, their evidence stands corroborated by the following facts and circumstances :

(i) PW 12, who held the post-mortem examination upon the body of the deceased, found ten injuries which, in his opinion, could be caused by a hard substance like a stick or crowbar;

(ii) PW 14, the other doctor, who examined PWs 1, 2, 3 and Gankidi Narsimha Reddy in the early hours of the morning, noticed a number of injuries on their persons and, according to him, all those injuries could also be caused by such weapons;

(iii) the FIR was lodged at the earliest available opportunity and therein the substance of the prosecution case finds place;

(iv) bloodstained earth, two crowbars and some broken sticks were found in the front yard of the house of the deceased; and

(v) an unhinged broken doorleaf was found lying on the floor.

From all these materials on record, it must be said that the concurrent findings of the courts below

that on the fateful night, a mob armed with crowbars, sticks and other weapons forcibly entered into the house of the deceased, killed him and injured four members of his family who came to his rescue, are unexceptional.

13. That brings us to the questions whether A-1 to A-5 and A-9, who are a only before us in these appeals, were amongst the miscreants and, if so, the nature of offences committed by them. PWs 1, 2 and 3 named A-1 to A-5 and A-9 (besides others) as the members of the mob and also gave out categorically the parts played by them in the rioting and murder. According to these witnesses, when the deceased was dragged to the front yard of the house, his wife intervened. A-3 then beat her with a stick. When PW 3 went to their rescue, A-2 also beat him with a stick. In the meantime, the deceased had extricated himself from their clutches and ran into the house but A-1 to A-3 went inside and dragged him to the front yard again. Then A-1 beat him with a nagatipale on his head and he fell down. A-2 then beat him with a crowbar on his cheek and when PW 1's wife intervened, A-9 beat her with a stick. Their further evidence is that A-1 to A-3 and A-5 beat the deceased again and when PW 1 tried to save him, A-4 beat him with a stick on his head. Lastly, the witnesses stated that on being instigated by A-1, the other accused beat Narsimha, when he came to their rescue. These witnesses also spoke about the previous long-standing enmity between their family and the accused. PWs 4 and 5 fully supported their version about the roles played by the above six accused persons. It is of course true that there are some contradictions in between their statements made in the court and before the police during investigation. Both the courts below found those contradictions minor and of no moment; and having gone through them, we are in complete agreement with the views so expressed.

14. As noticed earlier, the High Court, while relying upon the evidence of the above witnesses to uphold the conviction of A-1, rejected their evidence qua the other accused, only so far as it related to their convictions under Sections 148 and 302/149 IPC on the grounds, that without strict proof of their specific overt acts, they could not be convicted for the above offences only on the omnibus statements of the five eyewitnesses about their culpability and that their testimony regarding the overt acts of the other accused was not supported by the medical evidence. In our considered view, none of the grounds can be sustained.

15. The question as to what is required to be proved against a person who is alleged to be a member of an unlawful assembly came up for consideration before a four-Judge Bench of this Court in Masalti v. State of U.P (AIR 1965 SC 202 : (1964) 8 SCR 133) and it answered the same with the following words :

> "While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin v. State of U.P. (AIR 1956 SC 181 : 1956 Cri LJ 345) assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same

> assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly."

16. The same principles were enunciated by this Court in Lalji v. State of U.P. ((1989) 1 SCC 437 : 1989 SCC (Cri) 211) wherein it said : (SCC pp. 441-42, paras 8 & 9)

> "The two essentials of the section are the commission of an offence by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share in the common object. The common object of the assembly must be one of the five objects mentioned in Section 141 IPC. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.
>
> Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common objects of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons a assembled together armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge."

17. From the above judgments of this Court, it is evident that to ascertain whether a particular person shared the common object of the unlawful assembly, it is not essential to prove that he committed some illegal overt act or had been guilty of some illegal omission in pursuance of the

common object. Once it is demonstrated from all the facts and circumstances of a given case that he shared the common object of the unlawful assembly in furtherance of which some offence was committed - or he knew was likely to be committed - by any other person, he would be guilty of that offence. Undoubtedly, commission of an overt act by such a person would be one of the tests to prove that he shared the common object, but it is not the sole test. Coming now to the present case, the fact that at the dead of night, a mob of persons armed with various weapons forcibly trespassed into the house of the deceased after breaking open the door, clearly indicates that they had formed an unlawful assembly with a common object to commit some offence and each of them would be liable for the offence committed or knew was likely to be committed by any of the members of the mob. To ascertain what was the common object of the above unlawful assembly, we will advert later. Suffice it to say, at this stage, that in the facts and circumstances of this case, the six accused (with whom only we are concerned in these appeals) would be guilty for the offence committed by any other member of the mob, in furtherance of the common object, without proof of any overt act committed by them. We do not, however, wish to dilate on this aspect of the matter any further as we find that the second ground canvassed by the High Court that the ocular evidence regarding overt acts committed by A-2 to A-5 and A-9 is not supported by medical evidence, is factually incorrect.

18. As stated earlier, the deceased sustained 10 injuries (details of which we will refer to at a later stage) including lacerations and abrasions and the doctor opined that all those injuries could be caused by a hard and blunt weapon like a crowbar or stick. As regards the four injured, we get from the evidence of PW 14 that PW 1 sustained four injuries, PW 2 and PW 3 two each and G. Narsimha Reddy, six. He opined that injuries 1 and 6 found on the person of Narsimha Reddy were grievous in nature and all other injuries on his person and the injuries found on the persons of the three witnesses were simple in nature. He further opined that the injuries could be caused by a blunt weapon like a stick. The injuries found on the person of the deceased as also the four injured fit in with the version of the eyewitnesses regarding the manner of assault by A-1 to A-5 and A-9 and we are at a loss to understand how the High Court concluded that the medical evidence did not corroborate their evidence.

19. The next question that requires an answer is what was the common object of the unlawful assembly. Both the learned counsel appearing for the accused submitted that considering the nature of the injuries inflicted by the miscreants upon the deceased, it could not be said that their common object was to commit the murder. According to the learned counsel, even if the entire prosecution case was believed, the only inference that could be drawn was that the accused persons were guilty only of the offence under Section 325 for causing grievous hurt with blunt weapons, read with Section 149 IPC. To appreciate this contention raised on behalf of the appellants, it will be necessary to refer to the injuries sustained by the deceased. PW 12, who held the post-mortem examination upon the deceased stated that he found the following external injuries on his person :

> #1. Laceration left cheek 3" x 1"x 1/2".2. Abrasion left shoulder 2" x 1".3. Laceration right leg 1" x 1" x 1/2".4. Three abrasions on the left leg each 1" x 1".5. Laceration right frontal area 5" x 1/2" x 1/2".6. Laceration right parietal area 6" x 1" x 1".7. Laceration occipital area 4" x 1/2" x 1/2".8. Abrasion left lower chest 1" x 1"."##

So far as internal injuries are concerned he stated that on examination of the skull, he found fractures on the right temporal bone, parietal bone and occipital bone and the total length of the fracture was 7". He further stated that subarachnoid haemorrhage was present. He opined that the head injury alone was sufficient to cause the death of the deceased.

20. If the injuries were to be considered in isolation, we might have persuaded ourselves to give a second thought to the above submission of the learned counsel but when the injuries are considered in the context of the facts, that there was bitter enmity between the parties, that at an unearthly hour, the miscreants armed with various weapons like crowbars and sticks trespassed into the house of the deceased after breaking open the door, dragged him out of the bedroom to the front yard and beat him to death, and that whoever came to his rescue was beaten up, the only conclusion that can be drawn was that they formed the unlawful assembly with the common object of committing murder of the deceased and as soon as their objective was achieved, they left the place.

21. It was also contended by Mr Arunachalam that since, admittedly, the injury inflicted by A-1 caused the death of the deceased and the injuries inflicted by the others on his person were simple in nature, it could not be a conclusively said that A-2 to A-S and A-9 shared with A-1 a common object to commit the murder. In other words, according to the learned counsel, committing the murder was the individual act of A-1 and not in furtherance of the common object of the unlawful assembly. We are unable to accept the above contention for the reasons mentioned earlier. That apart, the manner in which the incident took place clearly proves that even if we were to assume that A-2 to A-5 and A-9 did not share the common object of committing the murder, they, being members of the unlawful assembly certainly knew that the murder was likely to be committed by A-1 in prosecution of the common object so as to make them liable under Section 302 read with the second part of Section 149 IPC. In either view of the matter, therefore, we are of the opinion that the High Court was not at all justified in acquitting A-2 to A-5 and A-9 of the charges under Section 148 and 302/149 IPC.

22. On the conclusions as above, we dismiss the appeal preferred by Edla Bhoom Reddy (A-1), son of Gopal Reddy, and allow the appeal of the State of Andhra Pradesh and restore the convictions and sentences recorded against Thakkidiram Reddy (A-2), Kasam Kanka Reddy (A-3), Mothey Narayana Reddy (A-4), Gunukulla Malla Reddy (A-5) and Edla Bhoom Reddy (A-9), son of Narsimha Reddy, by the trial court under Sections 148 and 302/149 IPC. A-2 to A-5 and A-9 are directed to surrender to their bail bonds to serve out the sentence imposed by the trial court.