

Rachamreddi Chenna Reddy and Others

Vs

State of A. P.

Criminal Appeal No. 767 of 1991

(G. B. Pattanaik, S. R. Babu JJ)

09.02.1999

JUDGMENT

PATTANAİK, J. -

1. The appellants and two others, in all ten in number, stood charged and were tried for having committed the offence under Section 302/149, 307/149 and 148 Indian Penal Code in the Court of the Session Judge, Cuddahep for forming an unlawful assembly and causing the death of Rachamreddi Rama Subba Reddy and Rachamreddi Obula Konda Reddy and for attempting to kill Chenna Reddy. The learned Session Judge acquitted Accused 7 and 8 but convicted the rest of the eight accused person under Section 302 read with Section 149 and under Section 148 IPC. They were, however, acquitted of the charge under Section 307/149 IPC. On appeal, the High Court affirmed the conviction and sentence passed by the learned Session Judge and hence the present appeal. During the pendency of appeal in this Court, two of the appellants died, namely Accused 4 and 5 and such the appeal stood abated as against them.

2. The prosecution case in a nutshell is that there was some dispute six months prior to the date of occurrence between the prosecution party and the accused party on account of the fact that PW 1, who is the brother of the two deceased person, obstructed the passage to the house do Accused 1 to 3. The two deceased persons who were brother of PW 1 naturally supported PW 1. The further prosecution case is that a week prior to the date of occurrence there had been an alternation between the two faction on account of some theft having taken having taken place. On the date occurrence on 10-12-1985 PW 1 went to the house of his brother who is one of deceased in the case and both of them went together to their field. By 12.00 noon while they were returning and PW 1 was following his deceased brother, in front of the flour mill in the village the accused persons came armed with lethal weapons and Accused 1 hacked the deceased with a sickle right on the road. Nine other accused persons then surrounded the deceased and attacked him with their respective weapons in their hands. PW 1 started running from the place to save his life and the accused persons also tried to chase him but could not catch hold of him. The accused persons then came back and proceeded to the second place of occurrence where PW 3 and the second deceased were returning. The accused persons then suddenly emerged from a place with the weapons in their hands and then brutally assaulted the second deceased. PW 3 went and informed PW 1 who was by that time near the dead body of the first deceased. PW 1 in the company of PW 3 came to the second place of occurrence which was nearby and then a complaint was drafted by PW 5 on the basis of information given by PW 1. In the meantime, the village servant PW 9 went to Rajupalem Police Station and informed the Sub-Inspector of Police PW 14 that two persons had been killed. This information was entered

in the General Diary Exhibit P-8 and the Sub-Inspector of Police PW 14 rushed to the place of occurrence. At the place of occurrence PW 1 gave him the written report Exhibit P-1 which was treated as the first information report and then the police started investigation. On completion of investigation charge-sheet was filed and after the accused persons being committed, they stood their trial and were convicted, as already stated.

3. The prosecution case essentially hinges upon the oral testimony of PW 1 so far as the murder of Deceased 1 is concerned, and on the evidence of PWs 3 and 4 so far as the murder of Deceased 2 is concerned. An essential feature in this case is that the occurrence took place between 1.00 p.m. to 1.15 p.m. and the Station Diary entry Exhibit P-8 was made shortly thereafter and the first information report was given to PW 14 at the place of occurrence at 3.45 p.m. which not only gives a vivid account of the entire occurrence but also implicates all the accused persons ascribing positive role and, therefore, the question of any deliberation amongst the members of the prosecution party to falsely rope in the accused persons does not arise. The learned Sessions Judge and the High Court scrutinised the evidence of 3 main eyewitnesses of the occurrence, PWs 1, 3 and 4, and held them to be fully reliable and, accordingly, convicted the accused persons.

4. Mr. Sundaravaradan, learned Senior Counsel appearing for the appellants mainly raised the contention that the evidence of PWs 1, 3 and 4 is not of such unimpeachable character relying upon which the courts could have convicted these appellants of the charge under Sections 302/149. In support of this contention, he relied on the decision of this Court in *Anil Phukan v. State of Assam* ((1993) 3 SCC 282 : 1993 SCC (Cri) 810).

5. He also contended that in any view of the matter the prosecution has failed to establish the ingredients of Section 149 and the conviction of the appellants by taking recourse to Section 149 cannot be sustained. In support of this contention he relied upon the decisions of this Court in the case of *Bolineedi Venkataramaiah v. State of A.P.* (1994 Supp (3) 732), *Thakore Dolji Vanvirji v. State of Gujarat* (1933 Supp (2) SCC 534 : 1993 SCC (Cri) 704).

6. In order to appreciate the contentions raised by the learned counsel for the appellants, we have scrutinised the evidence of PWs 1, 3 and 4, though normally this Court does not reappreciate the evidence when two courts of fact have already held them to be wholly reliable witnesses. We re-examined the evidence because 8 appellants have been convicted of the charge under Sections 302/149. On re-examining the evidence of the aforesaid witnesses we do not find anything elicited in their cross-examination to impeach their testimony. The sole ground of attack made by the learned counsel for the appellants is that the witnesses are the relations of the deceased. In our considered opinion, that can hardly be a ground to discard their version. On the other hand the relation of the deceased will not try to implicate any innocent person in the murder of the deceased. That apart no personal enmity has been alleged towards the accused persons. We do not find anything in the cross-examination of these witnesses PWs 1, 3 and 4, so as not to rely upon them. In our considered opinion the learned Sessions Judge and the High Court rightly held the witnesses to be wholly reliable and based the conviction upon their testimony. In this connection learned counsel for the appellants relied upon the decision of this Court in *Anil Phukan* ((1993) 3 SCC 282 : 1993 SCC (Cri) 810), which in our view goes against the contention of the learned counsel. It has been held in the aforesaid case that conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided that the witness passes the test of reliability. The Court has also further held that mere relationship of the witness with the deceased is no ground to discard his testimony if it is otherwise found to be reliable.

7. Coming to the second submission of the learned counsel for the appellants we also do not find any substance in the matter particularly when the sequence of events narrated by the three eyewitnesses is taken into account. The question whether the group of persons can be made liable for having caused murder of one or two persons by virtue of Section 149 IPC depends upon the facts and circumstances under which the murder took place. Whether the members of an unlawful assembly really had the common object to cause the murder of the deceased has to be decided on the basis of the nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the settings and surroundings under which the occurrence took place.

8. Mr. Sundaravaran, the learned Senior Counsel relying upon the decision of this Court in Thakore Dolji case (1993 Supp (2) SCC 534 : 1993 SCC (Cri) 704) vehemently argued that the allegation of prosecution witnesses as against the accused persons is of an omnibus nature and as such it would not be safe to convict the appellants under Sections 302/149. There is no dispute with the proposition but the question for consideration is whether in the facts and circumstances, as narrated by PWs 1, 3 and 4, the courts are justified in convicting the accused persons under Sections 302/149 IPC.

9. In Bolineedi case (1994 Supp (3) SCC 732) this Court held that for arriving at a conclusion of constructive liability, what the courts have to see is whether they had the common object and members of the assembly knew it likely to be committed in prosecution of that object. In the aforesaid case, the fact that all the accused persons chased and surrounded the deceased and inflicted injuries with their respective weapons was held to be sufficient to conclude that they had the common object to kill the deceased.

10. The post-mortem report of deceased Rachamreddi Rama Subba Reddy indicates that there are as many as 14 external injuries on his person of which 10 were incised wounds of different dimensions at different parts of the body. The cause of death was shock and haemorrhage. Internal examination indicated fracture of left frontal, parietal and temporal bones infiltrated with blood. The brain matter of left frontal, parietal and temporal bones was cut to a depth of 1". The post-mortem report of deceased Rachamreddi Obula Konda Reddy also indicates that he had as many as 13 injuries on his person and most of these injuries are incised in nature of different dimensions. The evidence of PW 1 relating to the death of the first deceased indicates that all the accused persons were armed with sickles, battle-axes, daggers and sticks and emerged from the western side of the mill and after A-1 hacked Deceased 1 on the head, the other 8 accused persons surrounded him, cut him and stabbed him. The number of injuries on the deceased as per the post-mortem report corroborates the oral testimony. The manner in which the accused persons appeared at the scene of occurrence with lethal weapons in their hands and mercilessly assaulted the deceased after surrounding him clearly exhibits that their common object was nothing but to kill the deceased, and, therefore, we see no infirmity with the judgment of the learned Sessions Judge as affirmed by the High Court in appeal.

11. The evidence of PW 3 also indicates almost identical situation and circumstances so far as Deceased 2 is concerned and the same is corroborated by PW 4. The sequence of events narrated by these two witnesses clearly depict the common object of these appellants in killing Deceased 2 and, therefore, their conviction under Sections 302/149 is fully justified. We, therefore, do not find any substance in the argument of the learned counsel for the appellant that the courts below committed error by taking recourse to the provisions of Section 149 IPC.

12. In the net result, we do not find any merits in this appeal. It is accordingly dismissed. The bail

bonds furnished by the appellants stand cancelled. They should now surrender to serve the remaining part of the sentence.