

SUPREME COURT OF INDIA

NELABOTHU SUNDARARAMAIAH & ORS.

Vs.

THE STATE OF ANDHRA PRADESH

04/12/2000

(K.T.Thomas, D.P.Mohapatro)

Appeal (crl.) 263 1992.

JUDGMENT

D.P.MOHAPATRA, J.

Thirty three accused persons faced trial on charges under different sections of the Indian Penal Code including Sections 302, 201 read with Section 149 IPC and Sections 147, 148, 286 and 307. Of them five have filed this appeal against the judgment of conviction under section 302 read with section 149 IPC and sentence of life imprisonment along with other lesser offences. The judgment of the Sessions Judge has been confirmed by the High Court in appeal in so far as the appellants are concerned. Of the seven accused persons who filed the appeal before the High Court, two were acquitted. Therefore, in this appeal we are concerned with the five appellants i.e. accused no.4 - Nelabothu Sundararamaiah, accused no.12 - Arekatla Raghavaiah, accused no.13 - Arekatla Sankaraiah, accused no.25 - Thota Rama Rao and accused no.28 - Bolla Venkateswarlu.

The bizarre incident happened on 13.7.1985 at about 4 a.m. in village Gogulapadu under Police Station Nakerikal in which two brothers Yaganti Peda Hanumaiah and Yaganti China Hanumaiah were the casualties and several persons were injured including PW 2 Karlapudi Pitchaiah and PW3 Karlapudi Pakeeraiah. The deceased and the injured belong to another village namely, Adigoppula. The said village is a faction ridden one, one faction was led by accused no.1 Nelabothu Punnaiah and the other by PW 2 Karlapudi Pitchaiah. There was rivalry between the two factions since long. Matters took a serious turn when a dispute arose regarding possession of four acres of land owned by one Garre Ramaiah. After the death of Garre Ramaiah his son leased the land to PW 2 but the first accused claimed that he had purchased the said four acres of land. Further on 15.5.1985 one Koti Veeraiah Son of accused no.23 and brother of accused no.17 were murdered and case in Crime No.22/85 on the file of Karampudi P.S. was registered in that connection. In that case, the two deceased persons, PWs 2 to 6, and 23 and some others were arrayed as accused. Out of them PW2, PW4 to PW 6 and PW 23 and the two deceased persons were not granted anticipatory bail. Therefore, they were hiding in Gogulapadu village evading arrest. They had taken shelter in the house of PW 5. The two deceased and PW 2 were taking food in the house of PW 1 while PWs 4 to 6 were taking food in the house of Seshaiah, Kistaiah and Sambaiah. Different portions of the ancestral house of PW1 were in occupation of the brothers Kistaiah and Sambaiah and two others. PW 8 is the son of Kistaiah and PW 7 is the wife of Seshaiah. PW 3, on getting an order of

anticipatory bail in his favour, came and joined the other persons on 12.7.1985. On the fateful night the two deceased and PW nos.1 to 6 and 23 after finishing dinner were sleeping on cots in the open space in front of the house of PW1. The children of PW1 were also sleeping on cots placed nearby. PWs 4 to 6 and 23 slept on the terrace of Yaganti Kistaiah's house. In the early hours of 13.7.1985 at about 4 a.m. about 25 to 30 persons armed with sticks, spears, iron pipes and bombs placed in tiffin carriers reached the house of PW1 and attacked the deceased and other co-villagers. The attackers ransacked the house, exploded bombs and assaulted the two deceased. They carried them away on two cots. PW2 who had made his escape from the house after being assaulted hide himself behind a bush and from there he saw the incident in the light of the electric lamp burning close by. He saw the accused persons taking away the two deceased in two tractors. On getting the information about the incident from PW1 the Sub Inspector of Police PW 29 registered the FIR as Crime No.65/85 and on getting the information PW 30 Circle Inspector of Police, Nekarikal Police Station reached the place of occurrence and took up the investigation. On 15.7.1985 at about 9 p.m. he received information from SHO Bommarajupalli police station that two unidentified bodies were found lying in Jammuvagu near Ipur village. On reaching Ipur village along with PWs 4, 5 and 23 and the SI of Police Nekarikal the two bodies were identified by PWs 4, 5 and 23. Thereafter arrangements were made for conducting post-mortem examination of the deceased by doctors PWs 24 and 25 who also examined the injured persons and submitted their reports. After completion of the investigation charge-sheet was laid against the thirty three accused persons. The prosecution examined thirty witnesses in all of whom PWs 1 to 8 and PW 23 were the occurrence witnesses. Out of the occurrence witnesses PWs 1, 7 and 8 were from Gogulapadu village while PWs 2 to 6 and 23 were residents of Adigoppula village. The learned Sessions Judge on appreciation of the evidence on record, convicted accused nos.1, 4, 12, 13, 23, 25 and 28 for the offences under Section 302 read with Section 149 IPC and also convicted accused nos.4, 12, 13, 25 and 28 under Section 148 IPC and accused nos.13 and 23 under Section 147 IPC. In addition, these accused persons were also held liable for punishment for the offence under Section 201 IPC. The remaining accused persons i.e. A-2, A-3, A-5 to A-11, A-14 to A-18, A-20, A-21, A-22, A-24, A-27, A-29 and A-33 were acquitted of all the charges framed against them. The seven accused persons convicted under Section 302 read with Section 149 IPC were sentenced to life imprisonment and to undergo three years R.I. each for the offences under Section 201 IPC and for two years R.I. for the offences under Section 148 IPC. A-13 and A-23 were also sentenced to suffer R.I. for one year for the offence under Section 147 IPC. All the seven accused persons filed the appeal before the High Court. The High Court in the judgment under challenge on assessment of the evidence of the occurrence witnesses acquitted A-1 and A-23 and maintained the conviction and sentence against the rest five accused persons who are the appellants herein. Shri M.N.Rao, learned senior counsel appearing for the appellants strenuously urged that no reliance should have been placed on the occurrence witnesses who were highly interested. He further contended that in the context of the time of occurrence and the manner in which it is alleged to have happened and the large number of persons involved in it, identification of these appellants by the eye-witnesses was not possible, and therefore, the Courts below were in error in convicting the appellants on the basis of such evidence. The learned counsel also questioned the identification of the appellants in the T.I. parade held by the Magistrate PW-27. We have perused the impugned judgment and also the judgment of the learned Sessions Judge. Both learned Sessions Judge and the High Court took note of the fact that the deceased and the occurrence witnesses and the accused belong to rival factions. Therefore, the Courts below considered it prudent to look for corroboration to the version of the eye-witnesses from other independent witnesses. Testing the evidence on such touchstone it has been held that the involvement of the appellants in the incident as deposed by PWs 2 to PW 6 and PW 23 has been corroborated by PW 8 who is admittedly not a resident of village Gogulapadu. We have also gone through the evidence of the witnesses to satisfy

ourselves if there is any scope for the criticism. We have no hesitation to hold that on the facts and circumstances of the case and on the material placed on record, the Courts below have rightly convicted and sentenced the appellants for the offence committed by them. The appeal, being devoid of merits, is dismissed.