

SUPREME COURT OF INDIA

Gajula Venkateswara Rao

Vs.

State of Andhra Pradesh

CrI.A.Nos.241-243 of 2001

(R.C. Lahoti and Brijesh Kumar JJ.)

29.7.2002

JUDGMENT

Brijesh Kumar, J.

1. These appeals have been filed against the judgment and order passed by the Andhra Pradesh High Court dated August 13, 1999, dismissing Criminal Appeal Nos. 1065, 1066 and 1092 of 1994 and upholding the conviction and sentences as awarded to the appellants by the Trial Court.

2. In all 17 accused persons had been prosecuted, out of whom one accused A-3 died during the trial and the remaining 16 accused have been convicted under Section 302/149 IPC and sentenced to imprisonment for life and some of them on two counts as well, and under various other sections with varying terms of imprisonment and fine, details of which are not necessary to be repeated for the purposes of disposal of these appeals. The present appeals before this Court have been filed on behalf of A-1, A-2 and A-4 to A-17. It will be convenient to refer to them as in the Trial Court as indicated above.

3. The prosecution case is that in Village Vekanuru, Police Station Avanigadda, District Krishna, Vijayawada, there are two factions and parties on political lines. One group had been under the leadership of D-3 (deceased No. 3). They are all sympathisers of Congress-I party. Whereas the Telugu Desam Party is said to have been led in the village by one Tungala Veera Raghavaiah, who was murdered on 06.12.1989 in village Vekanuru. D-1 to D-5 in this case, and P.Ws. 1 to 6 and 19 have been prosecuted for the aforesaid crime and the case was pending in the Court of Sessions. Prior to the aforesaid incident, one Gudivaka Venkata Naga Basava Rao was murdered on 19.5.1989. He was related to A-6 (accused No. 6) and belonged to their party. A case was registered in connection with murder of Gudivaka Venkata Naga Basava Rao as Crime No. 42/1989 in Avanigadda Police Station against D-1 to D-3 and D-5 along with four others. This case was also committed to the Court of Sessions and pending at the time of incident.

4. A-1 is said to have led the Telugu Desam Party in the village after the murder of Tungala Veera Raghavaiah. Due to incidents, as indicated above, the two parties had been inimical to each other. The D-1 to D-5 and P.Ws 1 to 6 and 19, who had been arrested in connection with the murder of Tungala Veera Raghavaiah, were originally released on bail with certain conditions on 05.4.1990. Later on, it is the case of prosecution that the conditions of bail were relaxed. Thus the D-1 to D-5 and P.Ws. 1 to 6 and 19 in this case, returned to the village Vekanuru and started living in the house of D-3. It is said that they all preferred to live together for the purposes of their safety and as a matter of daily routine they had been going to the bank of river Krishna in the morning to attend the call of nature etc.

5. The prosecution case further is that on 16.4.1990, all those persons i.e. complainant and party had gone to river Krishna at about 6.30 a.m. and while returning to the village they were attacked by the accused persons from behind the bushes with knives, spears and penaka kathi and bombs were also hurled on them. Apart from the injuries received on account of the bomb thrown by the accused persons, they also received injuries caused by other weapons also. A-1 and A-2 are said to have hacked D-1 with penaka kathi. A-5 and A-8 assaulted D-5 with penaka kathi. A-6 is also said to have wielded spear. The victims started running here and there and all the accused persons were wielding their weapons causing injuries to the deceased and other witnesses on different parts of their bodies with different weapons they were possessed of. As a result of the assault as indicated above, 5 persons died D-1 to D-5. Out of them 3 were beheaded and their heads were also carried away by the accused persons.

6. The witnesses who had run away here and there and had hid themselves again assembled and found four dead bodies lying there as D-5 till then was left with some life in him. He was, therefore, sent to the hospital on a cot by P.W.14 and another. They all then met P.W.12, who is Sarpanch of the village. The Sarpanch wrote a report Ex.P.1. The Sub-Inspector arrived at the spot on getting the news at 10.30 a.m. and the report P.1 was handed over to him. He sent the report to the police station, where the case was registered against the accused persons at 11.30 a.m. on the same day.

7. As a matter of fact, it is indicated that there was a picket of Armed Reserve Police in village Vekanuru. P.W.27 was posted on the said picket as one of the constables. He heard the sound of bomb explosion etc. from a distance of about 3 to 4 furlongs, upon which he came back to the picket along with other constables and informed the Head Constable about it and as instructed P.W.27 went to Police Station Avanigadda to inform the C.I. He informed him at about 8.00 a.m. P.W.35 on the instruction of P.W.36 Inspector of Police, went to the hospital to record the statement of D-5 but he was not able to give any statement. On the advice of the Medical Officer, D-5 was sent to the Government Head Quarters Hospital, Machilipatnam. P.W.36 - Inspector of Police reached the scene of offence at about 8.30/9.00 a.m. and P.W.1 handed over the report Ex.P.1 to P.W.35 on the basis of which the case was registered at the police station on 16.4.1990 at 11.30 a.m. The P.W.36 started investigation and prepared the observation report and also drew the sketch of the scene of occurrence and recovered certain articles from the spot and held inquest over the body of D-1 at 12.30 p.m. P.W.35 on the instruction of P.W.36 held and inquest over the dead body of the

other deceased persons. D-5 later died in the same Government Hospital, Machilipatnam. The injuries of the injured persons namely P.W.1 and others were also examined by Doctor at the Government Hospital mainly by P.W.21 at Avanigadda Government Hospital. The post mortem examination of the dead bodies was also conducted. P.W.40 - Inspector of Police, C.B.C.I.D., took up the further investigation of the case and interrogated the accused persons. On completion of the investigation, charge sheet was submitted on 27.7.1990.

8. The prosecution examined P.Ws. 1 to 6 and 19 as eye-witnesses. P.Ws. 9 to 11 are the wives of D-1, D-2 and D-3. The accused persons set up the case of denial. Considering the evidence on the record the Trial Court convicted the accused persons under Section 302/149 IPC and some of them on two counts and under various other sections of the Penal Code and awarded varying sentences thereof. The appeal preferred before the High Court also failed.

9. We have heard the learned counsel appearing for the appellant as well as the learned State counsel. Straightaway, it may be observed that there existed party faction in the village and murders were committed earlier as well, between the parties. They were being prosecuted for the earlier offences and Sessions trial, were pending at the time of incident. The D-1 to D-5 and the prosecution witnesses who were released on bail in connection with the murder of the Tungala Veera Raghavaiah, had returned to the village. They were apprehensive of the attack at the hands of their opponents, namely present appellants, therefore, perhaps they all lived together at the house of their local leader D-3. There is thus ample material on the record to indicate that the appellants had sufficient motive to commit the crime. Availing the opportunity on 16.4.1990, they launched the attack, killing five persons and injuring four others who are eye-witnesses to the incident.

10. Learned counsel for the appellant has submitted that there is delay in the lodging of the F.I.R., which raises doubts about the truthfulness of the prosecution case. In connection with the above submission, it may be noted that the incident occurred on 16.4.1990 at about 6.30 a.m. It is not an occurrence which can be said to be a hit and run affair. It was an occurrence in which a number of people received injuries and a large number of accused persons participated. Some of the injured and the deceased persons tried to escape but they were given a chase and beaten. The incident, therefore, must have taken some time. It is also obvious that the witnesses and others, whosoever may have been around had also run for safety and shelter. It must have taken some time to come out and assemble again making sure that the danger of assault again is over. They must have been shocked to see headless bodies lying on the spot, besides others. It is very natural in these circumstances that they went to the place of the Sarpanch to narrate the whole incident. The Sarpanch wrote down the report. In the meantime a Sub-Inspector reached the place of incident at about 10.30 a.m., who was handed over the report. He sent it to the Police Station, where the case was registered at 11.30 a.m. The sequence of the events and the circumstances as well as the horrifying nature of incident which took place leaving five persons dead, does not make it unnatural at all. The manner in which the F.I.R. was scribed and lodged can hardly be said to be inordinately delayed so as to create any kind of suspicion on the prosecution case. The High Court has taken into account all the relevant material on the point and discussed same in details and in our view, the High Court has rightly come to the conclusion that in the circumstances of the

case, it cannot be said that there has been inordinate or unexplained delay in lodging the report. The learned counsel for appellants has submitted that the special report should have been sent and received by the Magistrate immediately, whose office was also in the same complex or in the nearby building. The High Court has observed that there is an endorsement of the Magistrate, having received the special report on the same day. Even if for the sake of argument it is assumed that there may have been some delay in furnishing the special report to the Magistrate, it is difficult to conclude that it will be fatal to the prosecution case. It was received by the Magistrate on the same day. In our view, the High Court has satisfactorily considered the matter and has rightly come to the conclusion that nothing material turns upon the points raised by the appellants. A little delay here and there in furnishing copy of the F.I.R. to Magistrate, cannot be a ground to throw out the prosecution case, more so where four persons were lying dead at the spot, three of whom as headless bodies, another was just dying, apart from four other injured persons. It is not that the copy of the F.I.R. was not furnished to the Magistrate. It was furnished on that very day itself. This argument has no force.

11. It has then been submitted that the witnesses who have been examined are partisan witnesses, therefore, their statement cannot be relied upon. It is also submitted that no independent witnesses was examined. We hardly find any merit in this submission either. The witnesses, in these facts and circumstances of the case as have been indicated earlier, are all natural witnesses. Their presence is doubly established by the fact that they also received injuries at the hands of the accused persons. Learned counsel for the appellants has not been able to point out any material from the statements of the eye-witnesses, by reason of which it could be said that they have made false statements or their evidence may be liable to be rejected. The submission that the witnesses are partisan, therefore, they cannot be relied upon, cannot be accepted as a fixed formula or an inflexible principle of appreciation of evidence. Normally, as in this case such witnesses are very natural witnesses to be found present at the spot. They are competent to depose about the incident more so when they themselves are injured witnesses, unless there is any cogent reason or apparent material on the record, otherwise their evidence cannot be discarded merely because they belong to the same party or they are connected with the victims. It may also be observed that in the facts and circumstances, as they are in the present case, it is not easy to secure the statement of independent persons in the sense that they may not be connected with any party. Whosoever may come forward to depose may be aligned to one or the other faction. We find no good reason to accept the argument made on behalf of the appellants to discard the evidence of the prosecution witnesses, who are natural witnesses and their presence having been established by the fact of their being injured in the said incident.

12. Learned counsel for the appellant has then submitted that there have been contradictions in the statements of the witnesses, but failed to point out any contradiction worth attaching any importance to, by reason of which the statement of the witnesses can be discarded. The High Court has rightly observed that minor contradictions here and there can always be found in the statement of the witnesses due to lapse of time or other such reasons. There can always be some difference in description of the minute details amongst the witnesses as to who assaulted where and how many times or by which side of the weapon, etc. It is not

submitted on behalf of the appellant that the deceased persons or the injured witnesses did not receive the injuries of the weapons which are said to have been used by the accused persons in making the assault namely knives, bomb, spears and penaka kathi. No conflict between ocular testimony and medical evidence has been shown.

13. Considering all the submissions made by the learned counsel appearing for the appellants and the facts and circumstances of the case as well we hardly find any good reason to take any different view of the matter from one taken by the Trial Court and upheld by the High Court in appeal. In the result the appeals fail and they are accordingly dismissed. The appellants shall serve out the sentences as awarded to them by the Trial Court and upheld by the High Court.

Appeals dismissed.