

# SUPREME COURT OF INDIA

Kamma Otukunta Ram Naidu

Vs.

Cherreddy Pedda Subba Reddy

Crl.A.Nos.66-67 of 1997

(B. N. Agrawal and B. N. Srikrishna JJ.)

19.09.2003

## JUDGEMENT

### **B. N. Agrawal, J.**

1. Fourteen accused persons including respondent Nos. 1 to 5 (hereinafter referred to as 'the respondents') were tried for various offences and the trial Court convicted the respondents under Section 302/149 of the Penal Code and each one of them was sentenced to undergo imprisonment for life. They were further convicted under Section 148 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of two years. Respondent Nos. 1, 2 and 4 were also convicted under Section 3 of the Explosive Substances Act and each one of them was sentenced to undergo rigorous imprisonment for two years. All the sentences, however, were ordered to run concurrently. So far as the other accused persons are concerned, they were acquitted of all the charges by the trial court itself. Against their convictions, the respondents filed appeals before the Andhra Pradesh High Court whereas son of the victim-Otukunta Appaiah filed a revision against the order of acquittal. The High Court dismissed the revision application but allowed the appeal, set aside the convictions and sentences awarded against the respondents by the trial Court and acquitted them of all the charges.

2. Prosecution case, in short, is that members of prosecution party as well as the accused persons belonged to village Peddaventhurla in which village, there were two factions, leader of the one group being accused-Cherreddy Malla Reddy and all other accused persons his followers and of the other one Otukunta Channarayudu, who was brother of Otukunta Appaiah, whose followers were members of prosecution party. Six to seven months prior to the present incident, a dispute had arisen between the two groups over election of a co-operative society, during the course of which some incident had taken place leading to filing of two cases in which some of the accused persons were made accused and Golla Angilikam Narayana (P.W. 1), Kamma Otukunta Rama Naidu (P.W. 3) and Otukunta Appaiah (deceased) of the present case were cited as prosecution witnesses. In the said case, 21st March, 1988 was the date fixed for examination of prosecution witnesses before Judicial Magistrate 1st Class, Koilkuntla, on which date, in the morning, Otukunta Appaiah along

with Golla Angilikam Narayana (P.W. 1), Harijana Kosangi Subbarayudu (P.W. 2), Kamma Otukunta Rama Naidu (P.W. 3) and Golla Panyam Venkata Narayana (P.W. 4) and three others left their village for going to Koilkuntla for deposing in the said cases and they boarded a bus at village Perusomala at 6.30 a.m. As the bus was over-crowded, the aforesaid persons had no option but to remain standing behind the driver's seat. When the bus was about to start, all the fourteen accused persons, including the respondents, came in front of the bus, stopped it and while some of them got into the bus, others climbed on its top. When the bus reached village Ramabhadrunipalli, some passengers got down as a result of which, some of the accused persons, who were on its top, came down and got into the bus. Thereafter, when the bus was proceeding towards Koilkuntla, members of prosecution party, having apprehended that accused persons, who were armed with weapons, might attack them as they were moving towards them and when the bus reached near a culvert, they requested the driver to stop the same and when it stopped, the members of prosecution party got down from the bus through the door which was by the side of the driver and started running across the fields. The accused persons also got down from the bus and chased them. Respondent Nos. 1, 2 and 4, who were having three country made bombs, hurled the same on Otukunta Appaiah which hit him and exploded. Accused Chereddy Malla Reddy instigated the other accused persons to kill Otukunta Appaiah whereupon respondent Nos. 3 and 5 inflicted injuries upon his head and shoulder with hunting sickles which they were carrying. The prosecution witnesses, who had seen the occurrence, ran in different directions to save their lives, but P.W. 4 was overpowered by one of the accused persons and assaulted with iron pipe, whereafter all the accused persons fled away and P.Ws. 1 to 4 and their companions came near Otukunta Appaiah and found him dead.

3. A first information report was lodged at the concerned police station on the same day at 10.30 a.m. on the basis of the statement of P. W. 1. Police after registering the case took up investigation and on completion thereof submitted charge-sheet, on receipt whereof, the learned magistrate took cognizance and committed the accused persons, including the respondents, to the Court of Session to face trial.

4. Defence of the accused persons was that they were innocent and falsely implicated in the case on hand in order to feed fat the old grudge. According to them, no occurrence, much less the one alleged, had taken place and the deceased might have received injuries in some other manner of occurrence at the dead of night at some other place.

5. During trial, the prosecution examined fourteen witnesses in all, out of whom, P.Ws. 1 to 4 claimed to be eye-witnesses, of whom, P. W. 1 was the informant, Golla Kancharla Veerabhadhrudeu (P.W. 5), who was the co-passenger, stated that members of the prosecution party and the accused persons were travelling on that day in the same bus. Kattubadi Rahbamathullah (P.W. 6) was driver of the bus and Alluru Bhaskara Rao (P. W. 7) was its conductor, both of whom have turned hostile. Basam Kondaiah (P. W. 8), K. Rajanna (P. W. 9) and Ch. Veeraraghava Rao (P. W. 12) are the formal witnesses. Dr. N. S. Rama Swamy (P.W. 10) is the doctor who conducted post-mortem examination over the dead body of the victim and Dr. V.D. Karunakara Rao (P.W. 11) is another doctor who examined injuries of P. W. 4, S. Vema Narayana (P.W. 13) is the inspector of police who supervised the

investigation and S. A. Rasool (P. W. 14) is the investigating officer. Upon the conclusion of trial, while other accused persons were acquitted, the respondents were convicted by the trial Court as stated above. On matter being taken before the High Court, the order of acquittal was upheld but convictions and sentences of the respondents have been set aside and they have been acquitted of all the charges. Hence, these appeals by special leave in which only acquittal of the respondents by the High Court has been assailed.

6. The question which falls for our consideration is as to whether the order of acquittal recorded by the High Court suffers from perversity as it is well settled that an appellate Court should not interfere with the same unless it is found to be perverse.

7. In the present case, first we proceed to consider the medical evidence. P.W. 10 conducted post-mortem examination on the dead body of Otukunta Appaiah on the next day at 9.15 a.m. and found following injuries on his person:-

1. A lacerated injury at right shoulder measuring 6" x 4" x 2" blackening of skin present around the injury.
2. Incised injury at right shoulder 1" medial to injury No. 1 measuring 2" X 2" x 1½".
3. Lacerated injury on right cheek measuring 2" x 1" x 1" blackening of skin present all over the cheek.
4. Lacerated injury at right mastoid area of skull ½" back to ear measuring 1" x 1" x ½", blackening of the skin present around the injury.
5. Transverse incised injury on parietal area of the skull measuring 6" x 2" x 1".
6. A lacerated injury at right palm. There was destruction of complete palm. The bones of the palm were all fractured and the skin was hanging from the wound. There was blackening of the skin present all over the injury.
7. An incised injury at left scapular area of the back measuring 4" x 1" x ½".
8. An abrasion at right inguinal area of the abdomen measuring ½" x ½". Blackening of the skin present.
9. An abrasion at the middle of the right thigh measuring ½" x ½". Blackening of the skin present.
10. An abrasion at right knee measuring ½" x ½". Blackening of the skin present.
11. An abrasion at 10th inter costal space on right side measuring ½" x ¼". Blackening of skin present.

8. According to the doctor, all the injuries except injury Nos. 2, 5 and 7 could have been caused by explosion of country made bomb whereas injury Nos. 2, 5 and 7, which were incised wounds, could be by sharp edged weapon like hunting sickle. The doctor opined that the injuries were caused 24 to 28 hours before the post-mortem examination was conducted and the same were sufficient to cause death in the ordinary course of nature. From a bare perusal of the medical evidence referred to above, it would appear that the same supports the prosecution case in all material particulars. Apart from this, the objective finding of the investigating officer, P.W. 14 also supports the prosecution case inasmuch as when immediately after registering the case, he inspected the place of occurrence, dead body was found in the field in question together with signs of bomb explosion.

9. Turning now to the ocular version of the occurrence given by P.Ws. 1 to 4, who claim to be eye-witnesses, it may be stated that P.Ws. 1 and 3 were witnesses who, along with deceased, were going to depose in the earlier two cases against some of the accused persons of present case when the alleged occurrence had taken place and P.Ws. 2 and 4 were accompanying them. Their presence along with deceased at the alleged place of occurrence cannot be doubted. All these witnesses have supported the prosecution case in all material particulars and their evidence is consistent, inter se, as well as prosecution case disclosed in the first information report and by the witnesses in their statements before the police. The High Court was not justified in refusing to place reliance upon their evidence on the ground that they were interested and partisan witnesses as it is well settled that in a murder trial, sworn testimony of a witness cannot be rejected on this ground alone when the same is consistent with the prosecution case and supported by medical evidence as well as objective finding of the investigating officer. Further, the High Court was also not justified in doubting their evidence on the ground that while running away, they could not have turned back and seen assault upon the deceased which, in our opinion, cannot be said to be either improbable or unnatural conduct of the witnesses, especially when the deceased was father of P. W. 1.

10. P. W. 5, who is a resident of the village of occurrence and was also travelling in the same bus as co-passenger, stated that the accused persons and members of prosecution party were travelling in the bus in question on the fateful day and they got down from the bus near the culvert. The statement of this witness to the aforesaid fact is consistent with the evidence of P.Ws. 1 to 4. He has made consistent statement before the police as well as in Court but the High Court was not justified in refusing to place reliance upon his evidence on the ground that his examination by the police was belated, which is factually incorrect, as the witness was examined on the very next day of the occurrence.

11. The High Court has doubted veracity of prosecution case on the ground that there was no need for the members of the prosecution party to leave their house in the early morning for boarding the bus at 6.30 a.m. which was totally irrelevant it as the members of prosecution party were going to Court for deposing in criminal cases and distance of the place where the Court was situated being 25 K.Ms. it was quite natural on their part to board the bus which was scheduled to leave the village at 6.30 a.m. Further, the High Court has drawn adverse inference against the prosecution for not mentioning in the first information report that as the accused persons were advancing towards them in the bus, they having apprehended danger to

their lives, got down from the bus. It may be stated that in the first information report, it was enumerated that members of the prosecution party got down from the bus as they apprehended danger to their lives at the hands of the accused persons, who were armed with weapons, but the reason for apprehension that the accused persons were advancing towards them in the bus was not enumerated. In our view, this is a mere omission as it is well settled that first information report is not the repository of everything and merely because minutest details of the occurrence were not mentioned, the same cannot make the prosecution case doubtful. Further P. W. 4 having specifically deposed that tickets, which he had purchased for himself and others for travelling in the bus, were lost when he was being chased by the accused persons, the High Court was not justified in drawing adverse inference against the prosecution for its non-production. That apart, the High Court was also not justified in holding that delay was caused in receipt of first information report in Court inasmuch as, in the present case, the occurrence is said to have taken place between 7.00 a.m. and 7.30 a.m., the distance of police station was 10 K.Ms. from the place of occurrence where the first information report was lodged at 10.30 a.m. and after registering the case, the investigating officer simultaneously proceeded to the place of occurrence and sent the first information report to Court where the same was received at 4.15 p.m. on that day itself.

12. Thus, we are of the opinion that the prosecution has succeeded in proving its case beyond reasonable doubt and the High Court was not justified in doubting the veracity of prosecution case and recording the verdict of acquittal which suffers from the vice of perversity.

13. In the result, the appeals are allowed, impugned judgment of acquittal rendered by the High Court is set aside and that of the trial Court recording conviction of the respondents is restored. Bail bonds of the respondents, who are on bail, are cancelled and they are directed to be taken into custody forthwith for serving out the remaining period of their sentence.

Appeals allowed. .