**SUPREME COURT OF INDIA**

Busi Koteswara Rao & Ors.

Vs.

State of A.P.

Crl.No.454of2009

(P. Sathasivam and Ranjan Gogoi,JJ.)

22.11.2012

**JUDGMENT**

**P.Sathasivam,J.**

1. These appeals are directed against the final judgments and orders dated 20.06.2007 and 13.06.2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal Nos. 368 and 367 of 2003 respectively whereby the High Court while setting aside the conviction and sentence of other accused, partly allowed the criminal appeals upholding the conviction of the appellants herein for the offences punishable under Sections 148 and 436 of the Indian Penal Code, 1860 (in short 'the I PC') and reduced the sentence for the offence punishable under Section 436 of the IPC from 7 years to 3 years while maintaining the amount of fine and directed the appellants herein to surrender themselves before the trial Court in order to serve the remaining period of sentence.

2.Brief facts:

> "a)There were land disputes between two groups at Pedagarlapadu Village, Guntur District, Andhra Pradesh in respect of the lands belonging to the Temples which were leased out by the Endowments Department to the upperclass people of the village and there was resentment in local dalits for the same. One day, the agitators trespassed into the said lands, in respect of which, Pinnam Peda Subbaiah-the leaseholder filed a complaint which resulted into a deep seated rivalry between the two groups.
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> b) In order to take revenge, the other party attacked the leaseholder to commit his murder. In retaliation, on 14.04.1997, the accused/appellants, formed an unlawful assembly, armed with deadly weapons, raided the Harijan colony and set ablaze around 50 dwelling houses of the prosecution party and abused them in the name of their caste.

c) The Inspector of Police, Dachepalli took up the investigation which culminated into registration of Crime Nos. 29 and 28 of 1997 and later, the case was transferred to the Crime Investigation Department (CID). The Deputy Superintendent of Police, CID, Vijayawada filed the charge sheet against the accused persons for the offence punishable under Sections 147, 148, 435, 436 read with Section 149 IPC and Sections 3(1)(v), 3(1)(x),3(2)(v) and 3(2)(iv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SC & ST Act').

d) The cases were committed to the Court of Special Sessions Judge, Guntur under the SC & ST Act and numbered as S.C. Nos. 63/S/2000 and 62/S/2000. In both the cases, by separate orders dated 24.03.2003, the Special Sessions Judge found the appellants herein and others guilty for the offence punishable under Sections 148 and 436 of the IPC and convicted and sentenced each of them to suffer RI for one year and to pay a fine of Rs.2000/- each, in default, to further undergo simple imprisonment (SI) for one month for the offence punishable under Section 148 IPC and furthersentenced each of them to suffer RI for 7 years and to pay a fine of Rs.10,000/-, in default, to further undergo SI for two months for the offence punishable under Section 436 IPC read with Section 149 IPC.

(e) Aggrieved by the said order of conviction and sentence, the two appeals being Criminal Appeal Nos. 368 and 367 of 2003 were filed before the High Court.

(f) By impugned order dated 20.06.2007 in Criminal appeal No. 368 of 2003 and order dated 13.06.2007 in Criminal Appeal No. 367 of 2003, the High Court, partly allowed the appeals and while setting aside the conviction and sentence of other accused, upheld the conviction of the appellants herein for the offences punishable under Sections 148 and 436 IPC but reduced the sentence for the offence punishable under Section 436 IPC from 7 years to 3 years while maintaining the amount of fine.

g) Aggrieved by the said order, Busi Koteswara Rao (A-1), PinnamNageswara Rao (A-4) and Busa Mattayya (A-30) have filed Criminal Appeal No. 454 of 2009 and Busi Koteswara Rao (A-1), Katakam Pedda Biksham (A-11), Katakam China Biksham (A-12), Busa Mattayya (A-13), Busa Kotaiah (A-14), Pinnam Rangaiah (A-15), Pinnam Sankar (A-17), Pinnam Nageswara Rao (A-19), Boosa Srinu (A-21), Marasu Venkata Swamy (A-22), Pinnam Ramana (A-24) and Pinnam China Subbayya A-25 have filed Criminal Appeal No. 455 of 2009 before this Court by way of special leave."

3. Heard Mr. V. Sridhar Reddy, learned counsel for the appellants/accused and Mr. Mayur R. Shah, learned counsel for the respondent-State.

4. In the case on hand, total 79 persons were chargesheeted for variousoffences under IPC including Sections 147, 148 and Section 436. Though the prosecution has examined 52 witnesses and exhibited 12 documents in support of their case, among those witnesses, PWs 1-42 alone were cited as the eye¬witnesses to the occurrence. Due to the arson and violence that had happened on 14.04.1997 between two groups of the same village, about 50 dwelling houses reduced into ashes. PWs 2, 4-15, 18, 20, 22, 23 and 26-41 did not support the case of the prosecution and were declared hostile witnesses. On the other hand, PWs 1, 3, 16, 17, 19, 21, 24, 25 and 42 supported the version of the prosecution.

5. According to the prosecution, there was a friction amongst the two groups of the same village. The prosecution party belongs to Telugu Desam Party and the accused Party belongs to Congress (I). It is also projected by the prosecution that apart from the political rivalry, there is also serious enmity between the parties in respect of lease of temple lands.There is no dispute that the incident occurred on 14.04.1997 was a group clash between two rivalries. In such type of incidents, an onerous duty is cast upon the criminal courts to ensure that no innocent is convicted and deprived of his liberties. At the same time, in the case of group clashes and organized crimes, persons behind the scene executing the crime, should not be allowed to go scot-free. In other words, in cases involving a number of accused persons, a balanced approach by the court is required to be insisted upon. In a series of decisions, this Court has held that in cases of arson and murder where large number of people are accused of committing crime, the courts should be cautious to rely upon the testimony of witnesses speaking generally without specific reference to the accusedor the specific role played by them.Even, as early as in 1965, a larger Bench of this Court in Masalti &Ors. vs. The State of Uttar Pradesh, AIR 1965 SC 202 considered about how the prosecution case is to be believed. The principles laid down in para 16 of the decision are relevant which is as under:-

> "16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable.

Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case."

6. It is clear that when a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, the normal test is that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question.

7. No doubt, in State of U.P. vs. Dan Singh and Others (1997) 3 SCC 747,a Bench of two-Judges, in para 48 has held that " it would be safe ifonly those of the respondents should be held to be the members of the unlawful assembly who have been specifically identified by at least 4 eye¬witnesses "

8. We have already quoted the requirements for convicting an accused in a clash between two groups as per Masalti (supra) which is a larger Bench decision of this Court. In the light of the same, we reiterate and hold that when an unlawful assembly or a large number of persons take part in arson or in a clash between two groups, in order to convict a person, at least two prosecution witnesses have to support and identify the role andinvolvement of the persons concerned.

9.With the above background, let us consider whether the impugned order of the High Court convicting A-1, A-4 and A-30 in Criminal Appeal No. 454of 2009 and A-1, A-11, A-12, A-13 to A-15, A-17, A-19, A-21, A-22, A-24 and A-25 in Criminal Appeal No. 455 of 2009 is sustainable.

10. We were taken through the statements of witnesses who supported the case of the prosecution. We also perused all the relevant documents and connected papers. As discussed by the High Court, PWs 1-21 spoke about the participation of A-1 and A-38 whereas PWs 3 and 42 narrated with regard to the participation of A-4 and PWs 16 and 17 described about the participation of A-30. In the same way, the participation of the above mentioned 12 accused persons in Criminal Appeal No. 455 of 2009 has been spoken to by two or more witnesses.

11. By applying the principles laid down in Masalti (supra) and as reiterated by us in the above paragraphs, inasmuch as at least two prosecution witnesses have spoken to about the

involvement and the role played by the above accused persons, we have no reason to differ with the decision arrived by the High Court. It is clear from the statements madeby the witnesses on the side of the prosecution that the appellants/accused came in a mob and set ablaze around 50 dwelling houses and reduced them into ashes and the same were identified and their involvement is established by the reliable prosecution witnesses beyond reasonable doubt which cannot be disturbed. On the other hand, we fully endorse the view and the ultimate decision arrived by the High Court.

12. Coming to the sentence, the prosecution has established the offence under Sections 148 and 436 of IPC. Insofar as the appellants are concerned, though the trial Court has awarded 7 years of imprisonment, the High Court reduced the same to 3 years while maintaining the fine amount. In fact, Section 436 IPC enables the court to award punishment with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years in addition to the fine. We have already noted that the dwelling houses of PWs 1-42 were set on fire and reduced into ashes by the above appellants/accused and the same have been duly established by the prosecution beyond reasonable doubt. Taking note of the sentence prescribed under Section 436 of IPC, we are of the view that even the reduction of sentence by the High Court is not warranted, however, in the absence of appeal by the State, we are not inclined to disturb the same. 14) In the light of the above discussion, both the appeals are dismissed. In view of the fact that this Court on 06.03.2009 enlarged all the appellants on bail, if any portion of the sentence is left out, they are directed to surrender within a period of 2 weeks from today to undergo the remaining sentence.