

CASE NO.:  
Appeal (crl.) 1227-1228 of 2003

PETITIONER:  
M.A. Sattar & Ors.

RESPONDENT:  
State of A.P.

DATE OF JUDGMENT: 26/03/2008

BENCH:  
S. B. SINHA & HARJIT SINGH BEDI

JUDGMENT:  
J U D G M E N T

HARJIT SINGH BEDI, J.

1. These appeals arise from the following facts:

2. The deceased, Y. Penchal Reddy and accused No.1. P. Yellaiah along with several other persons had occupied some government land in Bhagat Singh Nagar and were residing in tenements that had been raised by them. A dispute had however arisen between the group represented by the deceased and that by P. Yellaiah with regard to the sale of plots. In the elections to the association, the deceased was elected as President and the group represented by P. Yellaiah was defeated. It appears that on account of the bitter relations between the two groups, one Mallaiah belonging to the group of the accused was killed in 1993 wherein the deceased was named as the main accused. He was however acquitted by the trial court. A few days prior to the present incident some violence had taken place and a meeting being held by the deceased was disturbed by the members belonging to the accused party. On 18th March, 1997 at 10.00 A.M., PW 1 Mohd. Hussain accompanied by the deceased was going to Chinthal and when they reached near Omkar Rice Mill, a group of four persons aged about 25 years came from the opposite direction and after putting chilly powder in the eyes of the deceased and PW 1, inflicted multiple stab injuries on the deceased. Mohd. Hussain PW 1 rushed the injured to the C.D.R. Hospital immediately but he was declared dead on arrival. He then went to the police station which was adjoining the hospital and gave a statement at about 11 A.M. which was recorded by PW 11 for offences punishable under Sections 341 and 302 of the I.P.C. On completion of the investigation, a charge under Section 302 read with 34 IPC was framed against the accused G. Raju (A-4), Hari Lal (A-5), M.A. Sathar (A-6) and Shivaji (A-7) and under Section 302 read with 109 was framed against accused P. Yellaiah (A-1), K. Satyanarayana (A-2), and M. Ashok (A-3).

3. The prosecution in support of its case placed reliance on the evidence of 11 witnesses and several other pieces of incriminating evidence. The trial court held that PW 1 and PW 4, Mohd. Hussain and Sathi Reddy respectively were eye witnesses to the incident as the latter too had been walking just ahead of the deceased at the time of the attack. The Court observed that the test identification parade had been conducted wherein PW 1 had identified four of the accused i.e. A-4 to A-7 whereas PW 4 had identified only two of them i.e. A-4 and A-7 in Court PW 1 had identified only A-3 to A-6

meaning thereby that A-3 had been identified for the first time in court and that A-7 who had been identified at the time of the test identification parade had not been identified in the court. The Court also observed that PW 4 had identified only A-4 and A-7 at the test identification parade but in the witness box he had identified A-4 to A-7 as the culprits. The trial court accordingly held that the evidence as to the involvement of A-3 to A-7 was doubtful and that there was no evidence whatsoever to connect A-1 and A-2 to the offence. The trial court accordingly ordered that:

A4 to A6 are found guilty for the offence under Section 302 read with 34 I.P.C and they are convicted under Section 235(2) Cr.P.C. The other accused are not guilty for the offences charged against them and they are acquitted under Section 235 (1) Cr.P.C. The accused Nos.2 and 7 shall be released forthwith, if they are not required in any other case.

4. Two appeals were thereafter taken to the High Court by the three convicted accused. The court opined that both the eye witnesses were consistent insofar as the involvement of A-4 was concerned. The court then held that insofar as A-5 and A-6 were concerned, the eye witnesses' account at the test identification parade did incriminate them and PW 1 had asserted that he had been able to see the accused as he had been wearing spectacles at the time when the chilly powder had been thrown in his face. The court also held that there was no reason whatsoever to disregard the test identification parade proceedings insofar as these accused were concerned, as they had been conducted in the presence of a Magistrate and the suggestion by the defence that the accused had been shown to the eye witnesses before the parade could not be believed. It was also found that the presence of the two witnesses at the spot at the relevant time had to be accepted, more particularly as PW 4 had no substantial connection with either of the parties and was truly an independent witnesses. The appeal was accordingly dismissed and the judgment and order of the trial court was maintained. It is in these circumstances that the present appeals are before us by way of special leave.

5. Mr. Rohit Minocha, the learned counsel for the appellants has repeated the arguments addressed before the two courts below. It has been argued that there were material discrepancies between the statements of the two witnesses with regard to the involvement of the appellants and that the trial court itself had found that the involvement of four of the accused had not been proved. It has also been argued that there was considerable delay in the conduct of the test identification parade and as such no sanctity could be attached to its proceedings.

6. The learned Government counsel has, however, supported the impugned judgments and has argued that the requisite sifting had already been done and benefit given to such of the accused whose presence had been perceived as doubtful.

7. We have considered the submissions of the learned counsel for the parties. It must first and foremost, be noted that the First Information Report had been recorded within a very short time of the incident in which full details of the incident had been given. As per the record, the incident had taken place at about 10.00 A.M. on 18th March, 1997 and the

First Information Report had been recorded within an hour or so at the police station itself. We also find no reason whatsoever to doubt the presence of the eye witnesses. PW 1 is the first informant and PW 4 figures in the report. We are also of the opinion that there is no merit in the stand of the learned counsel for appellants that an adverse inference ought to be drawn from the fact that though the accused had been arrested on 2nd April, 1997 the test identification parade had been conducted in the presence of the Magistrate after a long delay on 26th April, 1997. We find that except for a bare accusation that the accused had been shown to the witnesses during the interregnum, there is no evidence to show that this had in fact happened and even the suggestion put to the witnesses that they had seen the accused either in the police station or at the I.D.P.L. Colony, shows that the defence was probing in the dark and trying to make out a case for the defence where none existed.

8. It is also clear from the record that there appeared to be some enmity between the deceased and the group headed by P. Yellaiah (A-1) and though it has not been possible for the prosecution to bring evidence to show his involvement, but it has come in the evidence of PW 1 that three days prior to the incident, a meeting of all the colony members had been held wherein a decision had been taken that about 20 plots were to be sold to further develop the colony. It appears that this is the factor which precipitated the incident. We are, therefore, of the opinion that there is no merit in the appeals. They are accordingly dismissed.