

CASE NO.:
Appeal (civil) 889 of 2002

PETITIONER:
Harijana Narayana & Ors.

RESPONDENT:
Vs.
The State of Andhra Pradesh

DATE OF JUDGMENT: 30/07/2003

BENCH:
Doraiswamy Raju & H. K. Sema.

JUDGMENT:

J U D G M E N T

D. RAJU, J.

This appeal has been filed by the six appellants (Accused Nos.1, 3 to 7), aggrieved against their conviction concurrently recorded by both the courts below for charges under Sections 148 and 302 read with Section 149 of Indian Penal Code (for short 'IPC'), while holding them not guilty of the charge under Section 147, IPC, for which three years R.I. under Section 148 and life imprisonment in addition to payment of fine with a default clause therefor for the other offence, came to be dismissed. Accused No.2 was said to have died during the pendency of the proceedings in the Trial Court itself and the proceedings held to have abated against him on 5.7.1996.

The substance of the prosecution case is that there were ill-feelings between the accused and the deceased since the year 1985 when the accused in the month of August 1985 seems to have lodged a complaint against the deceased-Papi Reddy and his son, Bhasker Reddy (PW-4), on which a case in Crime No.110/85 under Sections 452, 341, 365, 322 read with Section 149, IPC, and Section 7(1)(d) of the PCR Act was registered. On 7.10.1987, the date of occurrence, at about 9.15 a.m., the deceased and PW-4, his younger son, were said to have been waiting at Pragatoor Bus Stand to go to Alampur to meet their Advocate in connection with a case pending against them. The Road Transport Corporation Bus seems to have arrived at 9.30 a.m. and after the passengers got down, the deceased was about to board the Bus, when A-6 and A-7 seem to have pushed aside the deceased while A-1 to A-5 picked up Axes and Spears, which were said to have been kept in the nearby Barber Shop. A-1 was alleged to have axed on the neck below the right ear of the deceased and A-3 axed on the right jaw, while A-2 axed on the neck of the deceased. A-4 and A-5 were said to have pierced with Spears on the right side of the abdomen. On hearing the hue and cry, PW-1 and PW-4 were said to have rushed to the spot and found the deceased sinking. The body thereupon seems to have been shifted to the house of the deceased, nearby but the victim immediately thereafter died. PW-1, one of the sons of the deceased, went to the Police Station and lodged a complaint with PW-10, who registered the same as Crime No.103/87 against the accused under Sections 147 and 302 read with Section 149, IPC. A-1 to A-3 are said to be brothers and A-5 to A-7 are the brothers-in-law of A-1 to A-3. The remaining accused were said to be related to each other in one way or the other. PW-1 and PW-4 are the sons of the deceased, while PW-2 and PW-3 are said to be close associates of the deceased. Both the parties belonged to the same Village. They and their associates also seem to have been already involved in one or other criminal cases. The accused were said to have formed themselves into an unlawful assembly, armed with deadly weapons like Axes, Spears and Sticks, etc. with the common object to commit the murder of Papi Reddy when he arrived at the Bus Stand. The accused joined together and indiscriminately

attacked the deceased causing severe injuries. During the course of investigation, PW-10 reached the house of the deceased and conducted in the presence of PW-6 and PW-7 inquest over the dead body of the deceased and sent the same to the Government Hospital, Alampur, for post mortem examination where the Doctor (PW-9), who conducted the post mortem examination, gave his opinion (Ext. P.15) that the death was due to shock and haemorrhage on account of the multiple injuries sustained by the victim. He seized M.Os. 8 to 11 from the house of the deceased. Statements of PW-2 to PW-4 and one Mala Chinna Krishnaiah were said to have been also recorded. Ext. P.4, Panchnama of the scene of occurrence, was also said to have been made and M.Os. 1 and 2 as well as blood stained earth were seized from the place of occurrence. PW-11, Circle Inspector of Police, also joined the investigation and recorded statements of PW-5 and PW-11. Statements were also said to have been recorded from the accused pursuant to which M.Os. 3 to 7 were said to have been discovered. On completion of the investigation, charge was laid for offences under Sections 147, 148 and 302 read with Section 149, I.P.C. The prosecution examined PW-1 to PW-11 and placed reliance upon Ext. P.1 to Ext. P.18 and M.Os. 1 to 11 to bring home the guilt of the accused. The defence of all the accused was of total denial by which it was claimed that they have been falsely implicated in this case. On conclusion of the trial, the Accused 1, 3 to 7 were examined under Section 313 of the Criminal Procedure Code explaining the incriminating circumstances and material against them, which, as noticed earlier, was denied by the accused. They did not choose to adduce any oral evidence on their behalf, but were content to rely upon Ext. D.1, the relevant portion in Section 161 Criminal Procedure Code, statement of PW-4.

On a careful consideration of the materials on record, the learned Sessions Judge found A-1 and A-3 to A-7 to be guilty of the offences under Sections 148 and 302 read with Section 149, IPC, though they were held not guilty for the charge under Section 147, IPC.

The plea on behalf of the accused that they were involved and implicated falsely taking advantage of the prior enmity; that the evidence of PWs were said to be not only of close relatives and associates of the deceased and, therefore, interested and that the independent witnesses, who were available on the spot, the nearby houses including some one from the Barber shop where the weapons were said to have been kept before being handled as well as the Driver and Conductor of Bus, etc. were deliberately withheld and not examined, did not meet with the favourable appreciation or acceptance in the hands of the learned Trial Judge. There was no positive claim or proper information to show that anyone in the nearby houses actually witnessed the occurrence and, therefore, the routine plea of the nature did not appeal to the Courts below for being countenanced. The alibi pleaded on behalf of A-7 could not be substantiated by proper evidence and PW-5 with whom he was said to be working, did not also support the claim of the said accused in this regard. Similarly, the claim of the Accused 1, 3, 5 and 6 that they were present on the fateful day and the relevant point of time at Alampur to attend the Special Mobile Court camping on that day, was not supported by any acceptable or concrete material and came to be also rejected. As far non-examination of the other independent witnesses, the learned Sessions Judge meticulously considered each one of them and found that with the criminal track record of the parties on either side and the sensitiveness in the area and tense relationship prevailing between the respective parties seems to have deterred any independent witnesses to volunteer to give evidence and that, therefore, the non-examination of such witnesses other than those examined was held to be not either a lapse or wanton omission on the part of the prosecution. The materials on record were held to be sufficient to substantiate the case of the prosecution that the accused forming into an unlawful assembly were not only found rioting armed with deadly weapons in a public place, but also committed the murder of the deceased.

Before the High Court also, the same line of defence was pursued on behalf of the accused but the learned Judges of the Division Bench seem to have been also very much satisfied with the quality as well as the quantity of the evidence, their reliability and genuineness for their acceptance and overruling the contentions on behalf of the appellants, the findings of fact recorded by the Trial

Judge and the consequent conviction of the accused came to be affirmed. The High Court also found that despite the misunderstandings and animosity between the parties, there was no concrete or justifying reasons to disbelieve the evidence let in, particularly that of PW-2, PW-3 and PW-4, which stood strengthened by the medical opinion as contained in the post mortem certificate (Ext. P.15) and the deposition of PW-8, the Doctor, who conducted the post mortem examination.

The learned Senior Counsel appearing on behalf of the appellants, while pursuing the same line of defence as was taken before the courts below, contended that the evidence of PWs, who were either close relatives or close associates of the deceased, cannot be trusted and solely relied upon to convict the accused and that the prosecution having withheld all independent and impartial witnesses, who might have been available on the spot, failed to act in a fair and just manner resulting in grave injustice to the accused and, therefore, the case in its entirety ought to have rejected as a false one. It was also urged that the plea of alibi and presence of A-1, A-3, A-5 A-6 and A-7 at different places other than the place of occurrence as pleaded on their behalf, ought to have been sustained and that they could not be involved, in any manner, with the occurrence or held responsible for the death of the victim. It was also contended on behalf of the appellants that the evidence of PW-5, on the face of it, seems to be tutored one and a parrot like repetition of the version of the incident belies their credibility and they could not be the basis for a conviction at all for such serious offences as those under consideration.

The learned counsel for the respondent-State, while adopting the reasoning of the courts below, contended that the courts below have given cogent and convincing reasons to overrule the objections on behalf of the defence and nothing could be said to discredit those reasons and the conclusions concurrently recorded on the basis of overwhelming materials on record, do not call for interference in this appeal under Article 136 of the Constitution of India.

We have carefully considered the submissions of the learned Senior Counsel on behalf of the appellants. Our attention has been drawn extensively to the evidence on record in support of the plea raised on behalf of the appellants. The evidence, in each case, has to be considered from the point of trustworthiness and from the angle as to whether it inspires confidence in the mind of the Court to accept and that the question of credibility and reliability of a witness has to be decided with reference to the way he fared in cross-examination and the nature of impression created in the mind of the Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties on either side. In such cases if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and very careful too in weighing such evidence. In a situation like the one on hand where there are factions based on communal disharmony and the factions involved in this case are on warpath with each other it would not only be idle but next to impossibility to secure the evidence of any independent witness and no one such would be prepared to undertake to risk themselves by coming as witnesses. All these aspects have been meticulously and elaborately considered by the learned Trial Judge in its proper perspective and convincing, cogent and sound reasons have been given to accept and act upon the evidence of PWs-2, 3 and 4 in this case. The reasonableness of the approach, appreciation of evidence and the ultimate conclusions arrived at by the Trial Court also seem to have had acceptance in hands of the High Court. Nothing concrete has been pointed out or substantiated to oblige us to either discredit or reject their evidence in this case or interfere with the conclusions arrived at by the courts below.

Every case should depend, ultimately, on the facts and circumstances of

the particular case. The case of the prosecution should be judged taking into account the overall circumstances of the case, with a practical, pragmatic and reasonable approach in the matter of appreciation of the evidence let in to drive home the guilt of the accused. The decisions reported in Shamu Balu Chaugule Vs. State of Maharashtra [(1976) 1 SCC 438] and Dharam Singh & Ors. Vs. State of Punjab [(1993) Supp. (3) SCC 532] turned on the peculiar facts actually proved in those cases, and the observations made therein cannot be taken dehors the facts held substantiated in those cases. Those decisions do not, in our view, purport to lay down any general principle of law for universal application despite the fact situation of the particular case concerned and, therefore, could be of no assistance for the appellants in this case. The plea of alibi, in this case on hand, came to be rightly rejected by the learned Sessions Judge in the absence of any credible or concrete proof of their absence from the place of occurrence and the same is not shown to be either unreasonable or incredible and in any manner incapable of acceptance. The two other decisions, one of the High Court and another of this Court, relied upon for the appellants also have no relevance to the facts on record in this case. It is only when the Courts are unable to sift the grain from the chaff and finds that the truth and falsehood so inextricably got mixed together in a given case and that it will be really difficult to separate them, the question of rejection of such evidence may arise. The decision of the Orissa High Court relied upon also turned on the facts of the case only. Merely because some of the eyewitnesses narrated the occurrence relating to the injuries caused in similar manner, that could not itself be a ground to reject their evidence in toto, if otherwise credible, trustworthy and creates confidence. The prosecution in this case, at any rate, could not be legitimately or properly accused of having withheld any material / independent witnesses with any unfair motive and the reasons assigned by the learned Trial Judge succinctly and sufficiently answers this grievance. Though an attempt has been made to impress upon us that the evidence of PWs-2, 3 and 4 are in a parrot like repetition and does not give an impression that they are natural or speaking the truth of what they actually saw, we are not impressed by such criticism of the evidence merely because while describing the injuries caused alone, the same is found to have been expressed in a particular order or manner. A careful reading of the rest and entirety of the evidence does not give any such impression and the only portion pointed out in this connection from their evidence may be due to the manner of recording the version given by the witnesses or the method of translation, and not otherwise.

On going through the totality of the evidence, we have no hesitation to affirm the well-merited findings concurrently recorded by both the courts below. That all the accused were found to have acted in concert and attacked the deceased armed with deadly weapons likely to cause death, when used as a weapon and that they formed themselves into an unlawful assembly with the common object of doing away with the deceased is found amply established and sufficiently proved by substantive and acceptable evidence. The murder, though of a person with a mixed record, seems to be a calculated one and the manner in which it was got executed by all the accused acting in unison in a preplanned manner to achieve their design, has been rightly held to answer the definition of murder by the courts below, punishable under Section 302 of the IPC read with Section 149, IPC. We find no justifiable reason whatsoever to draw any different conclusion than those arrived at concurrently by the courts below, on the evidence on record.

The appeal, therefore, fails and shall stand dismissed.