

PETITIONER:
SHABAD PULLA REDDY & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 20/08/1997

BENCH:
M.K. MUKHERJEE, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

THE 20TH DAY OF AUGUST, 1997

Present:

Hon'ble Mr. Justice M.K. Mukherjee
Hon'ble Mr. Justice S. Saghir Ahmad

D. Prakash Reddy and G. Narasimhulu, Advs. for the appellants.

G. Prabhakar, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

M.K. MUKHERJEE, J.
Leave granted.

2. In Sessions Case No. 48 of 1983 on the file of the Session Judge, Warangal 26 persons were initially placed on trial to answer charges under Sections 120-B, 148, 449, 452, 460 and 302 I.P.C. An alternative charge under Section 396 I.P.C. was also framed against them. During pendency of the trial A-12 and A-14 died while A-13 and A-25 absconded. Hence, the trial continued against the other twenty two. On conclusion thereof the learned Judge acquitted A-1 of all the charges and convicted the others as under:

- i) A-2 to A-11, A-15, A-23, A-24, and A-26 under Section 120-B I.P.C;
- ii) A-8, A-15 to A-22, A-24 and A-26 under Section 148 I.P.C;
- iii) A-15 to A-22 under Section 449 I.P.C;
- iv) A-22 under Section 302 I.P.C. (simpliciter);
- v) A-8, A-15 to A-21, A-24 and A-26 under Section 302/149 I.P.C. and
- vi) A-2 to A-7, A-9 to A-11 and A-23 under Section 302/109 I.P.C.

For the convictions so recorded they were sentenced to different terms of imprisonment with a direction that the sentences shall run concurrently.

3. Against their convictions and sentences they preferred separate appeals in the High Court. In disposing of the appeals by a common judgment the High Court set aside the convictions of A-2 to A-11, A-15, A-16, A-23 and A-24 but confirmed those of A-17 to A-22. As regards A-26, his conviction under Section 120-B I.P.C. was set aside but

that under Section 302/149 I.P.C. maintained. Assailing the above judgment of the High Court A-17 to A-22 and A-26 have filed these appeals which have been heard together and this judgment will dispose of them.

4. The prosecution case, to the extent it is necessary to be reproduced and is relevant for disposal of these appeals [now that the charge of conspiracy has failed and some of the accused have been acquitted], is as follows:-

(a) A-2 is the son of A-1, A-4 is the son-in-law of A-3, A-3 and A-24 are brothers. A-7 is the son of A-24, A-1 to A-8 and A-25 are the residents of Upparigudem village. A-10 and A-11, who are brothers, are residents of Moduguladudem. A-15 to A-23 are residents of different villages. Nookala Manamma (P.W.11), an issueless widow, adopted the deceased Nookala Narayan Reddy. The deceased also did not beget any children and, therefore, he adopted Nookala Ranjith Reddy (P.W.1) as his son. Smt. Rangamma, mother-in-law of P.W.11, had adopted A-1, son of her elder sister. The families of Rangamma and Manamma possessed considerable properties in or around Upparigudem. Over the adoptions there were misunderstandings between the above two families which led to disputes regarding their properties. Later on the disputes were referred to arbitration and the arbitrators decided that P.W.11 and the deceased should take 9/16th share and Rangamma and A-1 should take 7/6th share. In spite of the award, the disputes and differences continued and two factions were created: one led by the deceased and the other by A-1. To strengthen his faction A-1 brought A-24, a resident of Bojjannapeta village, to his village after his release from a murder case and appointed him as his Seradar. A-26, who was originally a resident of Gudur, was also brought by A-1 as his farm servant.

(b) In the night of July 10, 1981, A-12 and two strangers came to the house of A-24 and slept there. On the following morning i.e. on July 11, 1981, all three of them went to the sapota garden of A-24, A-2 to A-5, A-7, A-15, A-23, A-24 and A-26 also came and joined in the talks with A-12. At or about mid day A-24 asked Mathian (P.W.8), his farm servant, to bring lunch and he obliged. In the afternoon A-23 asked P.W.8 to bring two axes and 10 cart pegs. Accordingly P.W.8 brought them. Then A-12 asked P.W.8 to go towards 'Sankeesa Bata' saying that six persons would come and asked him to bring them. Accordingly, P.W.8 went to Sankeesa Bata, saw persons coming and brought them to sapota garden. They all proceeded towards the house of the deceased. At that time the deceased, his son P.W.1, his domestic servant-cum-cook Cenkathiah (P.W.2), Kishtiah (P.W.5), another farm servant, and P.W.11 were there. At or about 8.00 P.M. P.W.2 told them that dinner was ready and asked them to get up. P.W.5 then got up to go back to his house and opened the main entrance door only to find some persons there. Suspecting foulplay P.W.5 went out of the room through the door-way on the south and having closed it looked through the peepholes. He saw A-15, A-17 and A-22 entering the bedroom of the deceased, and then dragging him. They then snatched away the gun (M.O.1) from underneath the bed of the deceased and one of them aimed the gun at the deceased and asked him where he had kept gold and other valuables. One of the miscreants then broke open the wooden box and all papers were thrown pell-mell. Then P.W.1, who was in the other room, saw the deceased being dragged into the bedroom of P.W.1, A-15, A-17 and A-22 then opened the wooden box and took away 19 cartridges and cash therefrom and also two ear rings, gold chain and bangles from P.W.11. Meanwhile, A-18 to A-21 also joined A-15, A-17 and A-22. When P.Ws. 2 and 11 pleaded to

leave the deceased, they were pushed in the bed room of P.W.1 and bolted from outside. The miscreants then brought the deceased out and axed him to death. Afterwards they left the place raising singans.

(c) In the early morning of July 12, 1981 P.W.1 went to Seerole Police Station and gave a report of the incident (Ext. P-12) to the Sub Inspector Ramesh Babu (P.W.28) who registered a case thereupon. P.W. 28 gave an information about the incident to Sri Murthy (P.W.31), Inspector of Police, and both of them reached the scene of occurrence. P.W.31 held inquest over the dead body and sent it for post mortem examination. Dr. Reddy (P.W.17) conducted autopsy and found 7 external injuries and out of them injuries 1 to 6 were over the head and other vital parts of the body. He opined that the death was due to shock and haemorrhage as a result of multiple injuries.

(d) In course of investigation Sri Inniah (P.W.28), Sub-Inspector of Police, Khammam arrested A-26 at Yudlapuram. From his possession two cartridges (M.O.15) were recovered and they were seized under Ext. P-47. P.W.29 sent a requisition to Sri Krishnaiah (P.W.16), Judicial Magistrate of Madhira to record the confessional statement of A-26. Accordingly A-26 was produced before P.W.16 and after giving necessary warnings and putting necessary questions, he recorded the confessional statement of A-26 (Ext. P-34). After receiving the message about the arrest of A-26 and making of his confessional statement P.W.31 went to Khammam and obtained a copy of the confession. On the basis of the details mentioned therein, he proceeded with the investigation. Sri Reddy (P.W.30) the Inspector of Police, Khammam arrested A-22 on September 13, 1981 and seized the gun (M.O.1) and 12 cartridges under Ext. P-46. On October 4, 1981 P.W. 31 arrested A-17, A-18, A-19, A-20 and A-21. From A-17 he seized gold chain (M.O.5), from A-18 a pair of gold bangles (M.O.6), from A-19 a torch light (M.O.8), from A-20 a gold ring (M.O.3) and from A-21 a pair of gold ear flowers (M.O.7). After their arrest P.W.31 gave a requisition to Sri Lachiah (P.W.6) Judicial Magistrate, Narasampet to conduct test identification parade of A-15 to A-21. Accordingly P.W.6 conducted a test identification parade on 4.1.1982 in which P.W.1 identified A-17 to A-21 and P.W.2 identified A-18, A-20 and A-21, P.W.31 gave a similar requisition for A-16 and A-22 and in the second parade held on January 12, 1982 P.W.1 and P.W.10 identified A-22. After completion of the investigation P.W.31 laid the charge sheet on June 14, 1982.

5. When examined under Section 313 Cr.P.C. the accused persons pleaded not guilty to the charges levelled against them. So far as the appellants before us are concerned, the specific defence of A-17 to A-21 was that they were taken into custody much earlier than on October 4, 1981 as claimed by the police and that their photographs were taken and shown to the identifying witnesses. A-22 stated that he was taken from his house at Kaikondagudem and shown to the identifying witnesses. A-26 stated that three days prior to the alleged incident he had gone to Chinnakodur village to see his ailing mother and there the police arrested him. They took him in a jeep first to the outskirts of the village and then to Mahabubabad. There the Inspector of Police and Sub-Inspector of Police beat him and coerced him to confess, and for three days continuously he was beaten. On the fourth day he was shifted to Dornakal and there he was again beaten by the Inspector of Police and the Inspector of Police pressurised him to make a statement regarding the offence. He was confined illegally at the Police Station,

Dornakal for about six or seven days and later he was again shifted to Mahabubabd and he was pressurised to make a statement before the Magistrate as directed by the police. He was threatened that he would be shot dead if he did not make a statement as wanted by the police.

6. The prosecution examined in all 31 witnesses of whom P.Ws. 1,2, 5 and 11 figured as eye witnesses. Both the trial Court and the High Court discussed the evidence of these witnesses at length and found that their evidence so far as it related to the manner in which the incident took place was satisfactory and safely reliable. Since the F.I.R. promptly lodged by P.W.1 also contained the substratum of the prosecution case and the medical evidence corroborated the version of the eye witnesses, the Courts below concluded that the incident took place in the manner alleged by the prosecution. We do not find any reason therefore to disturb the above findings. Incidentally it may be mentioned that the learned counsel for the appellants ad not assail the above findings.

7. That brings us to the crucial question as to whether the prosecution has been able to conclusively prove the involvement of the appellants in the above offences of rioting and murder. To connect A-17 to A-22 with the crimes, the prosecution relied upon the evidence of their identification in Court by the witnesses and the corroborative evidence of their earlier identification in two test identification (T.I.) parades held on January 4, 1982 and January 12, 1982 by a Judicial Magistrate (P.W.6). The evidence of P.Ws 1 and 2 along with that of P.W.6, proves that in the T.I. parades P.W.1 identified A-17, A-19 and A-21 and P.W.2 identified A-18, A-20 and A-21.

In other words, A-17 and A-19 stand identified by one witness, namely, P.W.1 and A-20 and A-21 by both the one witness, namely, P.W.1 and A-20 and A-21 by both the witnesses, namely, P.Ws 1 and 2. Though the trial Court and the High Court accepted the evidence of such identification of Court and the High Court accepted the evidence of such identification in Court as it was corroborated by the evidence of their identification in T.I. parade, we find it difficult to rely upon the same as no explanation - much less plausible - was offered by the prosecution for the nordinate delay in holding the T.I. parades. As earlier noticed, the occurence took place on July 11, 1981 and five of the above six accused persons (A-17 to A-21) were arrested on Otober 4, 1981 and the T.I parades were held 3 months after their arrest. This unusual and unexplained delay in holding that after such long lapse of time the witnesses were still able to have a clear image of the accused in their minds and identify them correctly at the identification parades. So far as A-22 is concerned, he was arrested earlier - (on September 3, 1981) - and was identified in the T.I. parade by P.W.1 as one of the miscreants. He was also identifie by Papaiah (P.W.10), who claimed to have seen him earlier in the day in question, going across the field armed with an axe. For the reasons earlier mentioned, we are also unable to accept the identification of A-22 by P.Ws. 1 and 10. The other evidence on which the prosecution relied upon - and both the learned Courts accpeted to convict A-17 to A-21 - is the alleged recovery of gold chain (M.O.5), a pair of gold bangles (M.O.6), a torch light (M.O.8), a gold ring (M.O.3) and a pair of gold ear-flowers (M.O.7) from them respectively, on October 4, 1981 when all of them were arrested. According to the prosecution all those articles either belonged to the deceased or to the members of his

family. In our considered view, the evidence of recovery is too artificial to be believed. It seems strange that even after three months of the incident all of them were carrying a stolen article each including a torch light. If really they had stolen article each - including a torch light. If really they had stolen such articles, at the time of the murder, it was expected in the fitness of things that they would dispose of them as early as possible - more so when the nature of articles was such that they could pass hands quickly. This apart, even if we proceed on the assumption that evidence regarding the identification of the articles and recovery thereof is acceptable, still then, no presumption can be drawn after such a long lapse of time that they were party to the murder itself. The most favourable conclusion that can be drawn for the prosecution from such recovery is that they dishonestly retained the stolen properties knowing them to be stolen but in absence of any charge framed under Section 411 I.P.C. and on their acquittal of the charge under Section 396 I.P.C., no order of conviction can be recorded against them. So far as A-22 is concerned, the allegation is that the gun belonging to the deceased along with cartridges was recovered from his possession, but then the only reliable evidence in support thereof is that those arms and ammunition were recovered from an open shed belonging to P.W.9 and not from him. It cannot, therefore, be said that the prosecution has been able to conclusively prove its case against A-22. Lastly, coming to A-26, we find that the prosecution relied upon his retracted judicial confession and some other evidence in corroboration thereof. On carefully going through the confessional statement we find that A-26 confessed about a conspiracy to commit the murder of the deceased, but did not at all confess that he was a party to the murder. In other words, so far as the incident that took place in the night of July 11, 1981 in which the deceased met with his death, the statement made by A-26 before the Magistrate is exculpatory. One the confession made by A-26 is left out of consideration - as it must be in view of the acquittal of the charge under Section 120-B I.P.C. - there is no other substantive evidence to connect him with the offences in question. Incidentally it may be mentioned him with the offences in question. Incidentally it may be mentioned that though, admittedly, A-26 was a resident of the same village and was known to P.W.1 from long, he did not name him as one of the miscreants nor mention his name in the F.I.R.

8. For the foregoing discussion, we allow these appeals, set aside the order of convictions and sentences recorded against the appellants and acquit them. The appellants, who are on bail are discharged from their respective bail bonds.