PETITIONER:
GOLLA PULLANNA & ANR

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 13/08/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
RAY, G.N. (J)

CITATION:
1996 SCALE (5)788

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N I

NANAVATI J.

This appeal by Original Accused Nos. 9 and 11 arises out of the judgment and order passed by the Andhra Pradesh High Court in Criminal Appeal No. 756 of 1981 confirming the order of conviction and sentence passed by the Court of the Sessions Judge, Cuddapah in Sessions Case No. 45 of 1980.

On 8.9.1979 at about 4.30 P.M. Sivarami Reddi alias Sivanna of Village Kondapuram, along with his uncle Bodella Yellareddi (P.W.1) and his grandson Jayachandra Reddy (P.W.2) had gone to his lime garden for watering lime trees. At about sunset time they started returning and when they had come near the bus stand, Accused No.1 along with other 11 accused assaulted Sivanna with hunting sickles, daggers, spears and hatchets, because of the enmity between the party of Sivanna and the party of Accused No.1. Sivanna died on the spot. Jayachandra Reddy remained near the dead body and Yellareddy (P.W.1) went to the police station. He gave a complaint (Exh. P-1) in writing and on that basis an offence was registered. All the 12 accused were chargesheeted by the police and they came to be tried in the Court of Sessions, Cuddapah for the offences punishable under Sections 148, 302 read with 149 I.P.C. and in the alternative, for the offences punishable under Section 302 read with Section 34 I.P.C. During the pendency of the trial Accused No.2 died and the trial proceeded against the remaining 11 accused.

In order to prove its case the prosecution mainly relied upon the evidence of three eye-witnesses,namely, P.W.1 Bodella Yellareddy, P.W.2 Jayachandra Reddy and P.W.3 Shaik Bashu. The learned Sessions Judge believed the presence of the three eye-witnesses near the scene of offence and held that their evidence deserved to be believed "to the extent of their seeing the attack against the deceased with deadly weapons like spears, hatchets and hunting sickles." However, in view of the corrections made in the names of Accused Nos.5 and 7 in the written complaint

(Exh. P-1) the learned Sessions Judge doubted their participation in the offence and acquitted them giving benefit of doubt. As it was found that Accused Nos. 3 and 12 were of a different village and had no motive to participate in the attack they were also given benefit of doubt. The learned Sessions Judge convicted the rest of the accused that is Accused Nos.1,4,6 and 8 to 11 under Sections 148 and 302 read with 149 I.P.C. and sentenced them to undergo imprisonment for life. All those 7 accused challenged their conviction by filing an appeal in the High Court. During the pendency of the appeal Accused No.1 died. The High Court did not agree with the finding recorded by the trial court that there were interpolations in the written complaint (Exh. P-1) and held that Accused Nos.5 and 7 were wrongly acquitted. The High Court also rejected the contention raised on behalf of the defence that there was delay in lodging the first information report and that it was recorded after deliberation and consultations. The High Court believed that P.W.1, P.W.2 and P.W.3 were the eye-witnesses to the incident but observed that as they were interested witnesses their evidence was required to be scrutinized with care and caution. After carefully scrutinizing their evidence the High Court held that it did not suffer from material discrepancies or variations as contended by the defence. As regards Accused Nos.4,6,8 and 10 who according to the eye-witnesses had given spear blows to the deceased the High Court held that the evidence of the eye-witnesses was not consistent with respect to the part played by them, and also with the medical evidence and, therefore, they deserved to be given benefit of doubt. Believing the presence of the other accused except Accused Nos. 4,5,8 and 10, the High Court held that even though the acquittal of the acquitted accused could not be set aside in absence of an acquittal appeal against them, the conviction of Accused Nos. 9 and 11 under section 302 read with Section 149 could be upheld. Thus, the conviction of the appellants and the sentences awarded to them were confirmed by the High Court and to that extent the appeal was dismissed.

The learned counsel for the appellant raised four contentions before us. His first contention was that admittedly, there was enmity between the party of the deceased and the party of the accused and as the three eye - witnesses belonged to the party of the deceased their evidence should not have been accepted without independent corroboration. The second contention was that correction of names of Accused Nos. 5,7 and 11 in the written complaint (Exh.P-1) clearly indicates that there were deliberations after the complaint was given to the police and those accused have been falsely implicated subsequently. The next contention was that in their evidence the eye-witnesses had improved upon their versions before the police and in order to bring their testimony in conformity with the medical evidence they had stated before the court that blows with hatchets were also given to the deceased. It was lastly contended that Accused Nos. 5 and 7 were acquitted by the trial court and Accused Nos. 4,6,8 and 10 having been acquitted by the High Court the conviction of the appellants under Section 148 and Section 302 read with Section 149 could not have been upheld by the High Court. It was also submitted that even though the High Court has reversed the finding with respect to the involvement of Accused Nos. 5 and 7, in view of their acquittal, the acts alleged to have been committed by them cannot be taken into consideration either for inferring the common object of the unlawful assembly or for holding the appellants vicariously liable.

The fact that there was enmity between the two factions was not in dispute and both the courts below have appreciated the evidence of the eye-witnesses bearing that aspect in mind. The High Court has rightly observed that they being interested witnesses their evidence was required to be scrutinized with care and caution. The submission of the learned counsel that their evidence could not have been relied upon in absence of independent corroboration cannot be accepted as there is no such requirement of law. Even after close scrutiny both the courts thought it fit to rely upon their evidence and it cannot be said that they committed any eeror in doing so.

There is no substance in the second contention also. The corrections which we find in the complaint are with respect to the names of Accused Nos.5 and 7 and the name of the father of Accused No.11. Initially, the name of Accused No.5 was mentioned as Nagireddi's son but it was corrected to read Nagireddi's son Obula Reddy. Accused No.7's name was written as Chinna Narayana Reddy but it was corrected to read as Chinna Venkata-Narayanareddi. The name of the father of Accused No.11 was written as Bali Reddi but it was corrected and Obula Reddi was written.

P.W.1 has explained that when the complaint was read over to him he realised that he had not given the names of Accused Nos. 5,7 and the name of the father of Accused No.11 correctly. Initially he had described Accused No.5 as Nagireddi's son and later he became more exact by stating his name as Bodela Nagireddi's son Obul Reddy. He corrected the name of Accused No.7 from Bodela Subbarayudu's son Chinna Narayana Reddy to Bodela Subbarayudu's son Chinna Venkata Narayana Reddy. He had wongly mentioned father's name of Accused No.11 as Kabugota Bali Reddi. As his father's correct name is Obula Reddi he struck off Bali Reddi and wrote Obula Reddi. These corrections cannot be regarded as improvements suggestive of deliberations and false involvement. The incident in this case had taken place at about 6.30 P.M. The offence was registered at 7.00 P.M. on the basis of the written complaint given by P.W.1. We find from the first information report that the distance between the place where the offence took place and-- the police station was half a kilometer. Thus; within a very short time the written complaint was prepared by P.W.1 and handed over to the officer incharge of the Kondapuram Police Station and immediately thereafter on the basis of the said complaint the first information report was prepared. Neither the time interval nor the nature of corrections indicate that the corrections were made with a view to falsely implicate Accused Nos.5,7 and 11. So far as Accused No.11 is concerned it was not even suggested that there was any other person in Village Muthucumarri by name "Sambasiva Reddy son of Kabugota Balireddy". Therefore, no inference can be drawn' from the said corrections that they were made mala fide with a view to falsely involve those accused.

It was next contended that the eye-witnesses P.W.1 and P.W.2 have deliberately made a material improvement in their evidence as regards the weapons carried by Accused Nos.5 and 11 so as to bring their evidence in line with the medical evidence and, therefore, their evidence should not have been believed without independent corroboration at least with respect to Accused Nos.5 and 11. In his written complaint P.W.1 had stated that the accused had assaulted Sivanna with sickles, spears and axes. In the inquest report (Exh.P5) it was mentioned that the deceased died due to injuries caused to him with hunting sickles, daggers and spears. But in his evidence P.W.1 stated that the injuries to the deceased were

caused with hunting sickles, daggers, hatchets and spears. In his cross-examination he admitted that he had not referred to hatchets in his complaint and that he knows the difference between an axe and a hatchet. Thus there is a discrepancy between his evidence and what he stated before the police as regards the weapons with which Accused Nos.5 and 11 had caused injuries to the deceased. However, it would not be proper to infer therefrom that the witness was deliberately raking an improvement with a view to bring his evidence in line with the medical evidence. P.W.1 was the first witness to be examined in the case and there was nothing either in the post mortem notes or in any other material on record to show that the injuries found on the deceased could not have been caused by an axe. Therefore, it cannot be stated that he was deliberately changing the weapons carried by Accused Nos.5 and 11 with a view to make his evidence consistent with the medical evidence. Doctor who performed the post mortem examination was examined two days after the evidence of P.W.1 and P.W.2 was recorded. A question was put to him in his cross-examination that if the victim was lying on the ground immobile and if a blow was given whether any of the injuries noticed on the deceased could have been caused by such a blow. The doctor replied in the negative. It was not positively put to the doctor that none of the injuries noticed on the person of the deceased was possible by a hatchet blow. It was also not put to him that none of the injuries noticed by him could have been caused by an axe. We, therefore, do not find any inconsistency between the medical evidence and the evidence of P.W.1. A hatchet is not very different from an axe, the difference being in size only. Therefore, the discrepancy appearing in the evidence of P.W.1 is not of such a nature as would create any doubt regarding participation in the attack by Accused Nos.5 and 11. Challenge to the evidence of P.W.2 on the same ground is really misconceived. An attempt was made by the defence in the cross-examination of this witness to establish that before the police he had not stated that Accused Nos.5 and 11 had hatchets. he denied that suggestion and maintained that he had so stated before the police. P.W.9, the investigating officer, in his cross-examination stated that such a statement was made by the witness before him. Thus there was no inconsistency at all between his earlier version and the version before the court. P.W.3 stated generally that the accused had assaulted the deceased with hunting sickles, spears, hatchets and daggers. His evidence as regards the weapon carried by Accused No.5 is in consistent with the evidence of other two eye-witnesses inasmuch as he stated that Accused No.5 had a spear at that time. This witness had seen the assault from a little distance and, therefore, he appears to have committed a mistake while describing the weapon carried by Accused No.5. As the assault was sudden and it had taken place at the sunset time much importance cannot be given to such discrepancies and it would not be proper to reject the evidence of the eye-witnesses because of such discrepancies.

Lastly, it was contended by the learned counsel, relying upon the decisions of this Court in Krishna Govind Patil vs. State of Maarashtra 1964 (1) SCR 678 and Maina Singh vs. State of Rajasthan 1976 (3) SCR 651, that as the Accused Nos.5 and 7 were acquitted by the trial court and Accused Nos.4,6,8 and 10 came to be acquitted by the High Court, the appellants could not have been convicted under Section 302 read with Section 149 I.P.C.

In Krishna Govind Patil's case (supra) it has been held that where more than one person are charged with substantive

offence read with Section 34 and if others are acquitted conviction of one under substantive offence read with Section 34 cannot be sustained because before a court could convict a person under Section 302 read with Section 34, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. When the other accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them, the result in law would be the same; it would mean that they did not take part in the offence. If they did not act conjointly with the remaining accused, the remaining accused could not have acted conjointly with them. In the absence of any evidence to indicate that the persons other than the remaining accused participated in the offence, his conviction under Section 302 read with Section 34 cannot be sustained.

In the case of Maina Singh vs. State of Rajasthan 1976 '(3) SCR 651 this Court has. held that it is not permissible to invoke Section 149 or Section 34 I.P.C. in a case where the accused is charged with commission of an offence only with named persons as co-accused and others have been acquitted. It was submitted that when other accused are acquitted by giving them benefit of doubt then the remaining accused can be convicted only for his own act and not for the acts committed by others.

Both these cases were considered by this Court in Brathi alias Sukhdev Singh vs. State of Punjab 1991 (1) SCC 519 and distinguished on the ground that "in none of them the appellate court is shown to have disagreed with the trial court's conclusion on facts, and the appellate court has proceeded on the footing that the order of acquittal recorded is correct."

This Court after referring to its earlier decisions in Marachalil Pakku vs. State of Madras AIR 1954 SC 648, Sunder Singh vs. State of Punjab AIR 1962 SC 1211 and Harshadsingh vs. State of Gujarat at 1976 (4) SCC 640 has held that "before Sections 34, 149 or 120-B can be applied, the court must find with certainty that there were at least two persons sharing the common intention or five persons sharing the common object or two persons entering into an agreement. The principle of vicarious liability does not depend upon the necessity to convict a requisite number of persons; it depends upon proof of facts beyond reasonable doubt which makes such a principle applicable." This Court has also held that "in the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to indirectly or incidentally find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding is not tc reverse order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. Where the evidence examined by the appellate court unmistakably proves that the appellant was guilty under Section 34 having shared a comnon intention with the other accused who were acquitted and that the

acquittal was bad, there is nothing to prevent the appellate court from expressing that view and giving the finding and determining the guilt of the appellant before it on the basis of that finding.

In this case, the High Court has recorded a categorical finding, after reappreciating the evidence, that Accused Nos. 5 and 7 were wongly acquitted by the learned Sessions Judge. Therefore, even after the acquittal of Accused Nos.4,6 8 and 10 the High Court was justified in proceeding on the basis that there were more than five persons out of the named accused who had participated in the assault on the deceased and confirming the conviction o-f Accused Nos.9 and 11 Under Section 302 read with Section 149 I.P.C.

As we do not find any substance in any of the contentions raised on behalf of the appellants this appeal is dismissed. The appellants were ordered to be released on bail during the pendency of this appeal. Therefore, they are ordered to surrender immediately to serve out the remaining sentence.