

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1768 OF 2008

GURRALA ANTHONY & ORS. APPELLANTS

VERSUS

STATE OF ANDHRA PRADESH RESPONDENT

O R D E R

This appeal has been filed by three of the accused who stand convicted and sentenced for offences punishable under Sections 302 and 341 read with Section 34 of the Indian Penal Code. Two others A5 and A6 were acquitted by the trial court whereas A1 was acquitted by the High Court. In other words, out of the six accused brought to trial only three are before us by way of this appeal after special leave.

The deceased Srinivasa Rao was working as a coolie in the Mango Market in Vijayawada and would leave for work at 4:30a.m. and return home to his village by 9:30p.m. On 3rd April, 2004, P.W. 1 - the mother of the deceased, received information from P.W.4 to the effect that she had seen her son lying near the bridge with serious injuries. On receiving this

information P.W. 1 went to the spot and was told by those present that accused A1 to A4 had beaten her son with sticks causing his death. She, accordingly, lodged a report with the police a short while later. The investigation made by the police revealed that several witnesses including P.Ws. 2 and 3 had been accompanying the deceased while he returned home and that they had seen the attack on him. It was also ascertained that A1 to A4 were bad characters and in the habit of committing thefts in the market and misbehaving with the women workers and the deceased, had, on several occasions, admonished them for bad behaviour which had led to unpleasant scenes between them. On the completion of the investigation, the accused were brought to trial for offences punishable under Sections 302 and 341 of the IPC. During the course of the trial, the prosecution relied on the evidence of P.W. 1 admittedly not an eye witness who gave the story with regard to the motive for the incident as also the fact that the deceased was employed in the Mango Market as a labourer, and P.Ws 2 and 3 who were allegedly accompanying the deceased at the time of the incident and claimed to be eye witnesses. The trial court relying on this evidence as

corroborated by the medical evidence, convicted accused A1 to A4 and acquitted A5 and A6. The High Court in appeal, acquitted A1 as well. This appeal is before us at the instance by the remaining accused.

Mr. Nirmal Chopra, the learned counsel for the appellants has raised several arguments during the course of the hearing. He has pointed out that in the background of the fact that P.W. 1 was not an eye witness and P.Ws. 3 and 4 had been declared hostile whereas P.W. 2 had denied that he had seen the incident, there was no evidence against the appellants. He has further submitted that as the FIR did not indicate that P.W. -1 or the eye witnesses knew the appellants and as P.W. 1 had deposed that she was in a position to identify them, the omission on the part of investigators in holding a test identification parade was fatal to the prosecution story. He has further submitted that police statement under Section 161 of the Cr.P.C. of both P.Ws. 2 and 3 had been recorded about 40 days after the incident which also cast a doubt on their credibility.

Mr. I. Venkatara Narayana, the learned senior counsel for the respondent-State has, however, supported the judgment of the trial court and has

pointed out that the eye witness account of P.W. 2 was supported by the recoveries of a stone and sticks and blood stained shirts from the place of incident or from the person of the appellants, and the prosecution story thus stood proved.

We have considered the arguments advanced by the learned counsel for the parties. P.W. 1 - the mother of the deceased is admittedly not an eye witness. She had filed a very sketchy FIR on the basis of the information that she had received from P.W. 4. She had given the names of four of the appellants in the FIR and further went on to say that she was in a position to identify them although it is the admitted position that they did not belong to her village. As an identification parade had not been held, the prosecution story rests almost exclusively on P.Ws 2 and 3 who were initially said to be the eye witnesses of the incident. P.W. 3 was declared hostile as he did not support the prosecution in the examination-in-chief. Mr. Venkat Narayana has, however, pointed out that in the cross-examination he had supported the prosecution. On account of this ambivalence, we are unable to comprehend as to which of the two versions given by him is the correct one. P.W. 2's statement

is equally unworthy of belief. He deposed that he was not an eye witness to the incident and he had reached the place after the injuries had been caused to the deceased and had found him lying dead on the floor. Moreover, we notice that his statement under Section 161 of the Cr.P.C. had been recorded by the police for the first time on 14th May, 2004 whereas the incident had happened on 3rd of April, 2004. When questioned, P.W. 2 admitted that his statement could not be recorded earlier as he was not available to the police. The Investigating Officer too was very categorical when he admitted that the statements of P.Ws. 2 and 3 had indeed been recorded on 14th May, 2004.

In the background of a very uncertain eye witness account, the recovery of some of the sticks allegedly used in the murder or the blood stained shirts have no significance. We, accordingly, allow the appeal, set aside the conviction of the appellants and order their acquittal.

.....J
[HARJIT SINGH BEDI]

.....J

[J.M. PANCHAL]

NEW DELHI
NOVEMEBR 12, 2009.



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O R D E R

We have heard the learned counsel for the parties.
Vide our separate reasoned order, we have
allowed the appeal and set aside the conviction of the
appellants and ordered acquittal.

It is stated by Mr. Nirmal Chopra, the learned
counsel for the appellants that the appellants are in
jail. We direct that the appellants shall be set at
liberty forthwith if not required in connection with
any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
NOVEMBER 12, 2009.

