

PETITIONER:
KOMMA NEELAKANTHA REDDY & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 16/02/1978

BENCH:
SHINGAL, P.N.
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SHINGAL, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1978 AIR 1021 1978 SCR (3) 75
1978 SCC (2) 473

ACT:

Eye witness--Reliability of witness--Eye witnesses who were Police-men specially posted due to strained relations between the two factions, making the F.I.R. Ex. P 2 when the party of the deceased refused to make a report, but making a statement in a departmental enquiry against them for dereliction of duty, that they arrived at the place of incident after everything was over.
Penal Code (Act 45 of 1860), 1860 Sections 141, 149, 151--Scope of.

HEADNOTE:

Twenty five persons were charged with offences under various sections of I.P.C. on the basis of first information report No. Ex. P 2 filed by PWs. 1 and 2. PWs. 1, 2 and 3, the eye witnesses, were members of Police Party specially posted at the place of incident due to the strained relations between the party of the accused and the party of the deceased. The F.I.R. was drawn up and filed by them as the party of the deceased refused to make a report. The first information report stated, (a) that the party of the deceased went upto the terrace of the house of Subbi Reddy and challenged the party of the accused to a fight, whereupon the party of the accused came to the terrace of the house of. one Somi Reddy which was at some distance from the house of Subbi Reddy, (b) that A2, A4, A6 and A9 were armed with guns and as a result of their firing at the party of the deceased several persons received gun-shot injuries of whom Ramakrishna Reddy succumbed to his injury and (c) that the policemen tried to apprehend the accused but they ran away. The Additional Sessions Judge, Cuddapah, who did not find it possible to place reliance on the evidence of the prosecution witnesses, acquitted the accused by his judgment dt. April 21, 1971. An appeal was filed against the acquittal. A1 and A2 died during the appeal. The High Court relied on the testimony of PWs. 1 to 3 set "id, the judgment in respect of the acquittal of A 3 to A 9, A 11, A 12, A 13 and A 19 'but confirmed the acquittal of the rest. Hence this appeal. It was contended that in view of the contrary statements made by PWs. 1 to 3 in the departmental enquiry against them for dereliction of duty, they falsely claimed to be the eye witnesses and therefore the conviction could not be

sustained.

Dismissing the appeals of A 4, A 6, A 9 and allowing the appeals of the rest the court,

HELD : 1. The High Court rightly took the view that all the three policemen were present at the time of the incident and witnessed it, and that the statements given by them in the departmental inquiry against them for dereliction of duty were for the purpose of avoiding an adverse finding in the inquiry. One tell-tale fact which was taken into consideration was the injury received by PW 3 when both sides were throwing stones at each other. [78E-F]

2. The High Court did not misread the evidence inasmuch as it has taken note of the fact that PW 1 was a local constable who was stationed in village Kasanur not only for the occasion which led to the present incident, but also on earlier occasions including service of summonses, and therefore had opportunity of knowing the names of the accused. It was therefore rightly held that A 2, A 4, A 6 and A 9 had fired their guns resulting in the death of Ramakrishna Reddy and injuries to several prosecution witnesses. [78D, E, H]

3. Section 149 I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

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"Unlawful assembly" has been defined in section 141 I.P.C., while s. 142 states who can be said to be its member. An unlawful assembly is thus an assembly of five or more, persons if the common object of the persons composing it is of the nature specified in items first to fifth of the section. It cannot be urged that any item other than that part of the third item which relates to "other offence" could possibly be attracted to the present case. [79B-D]

(b) An offence will fall within the purview of s. 149 I.P.C. even if the members of the assembly knew that it was "likely to be committed" in prosecution of their common object or if the offence was such as the members of that assembly knew to be likely to be committed in prosecution of that object. 'Mere is nothing in the statements of the three police witnesses to prove that this was so. Section 149 I.P.C. will not therefore fasten criminal liability on the other accused. [80G-H]

(c) From the evidence of PWs. 1 to 3 it is not possible to reach the conclusion that the other accused (other than A 2, A 4, A 6, A 9) were armed with spears or that they went up the terrace with the common object of committing any offence. On the other hand the statements of PWs. 4 and 6 showed that the party of the accused did not go to their terrace of their own accord for committing any offence. A 2, A 4, A 6 and A 9 were armed with guns and fired them some time thereafter, but there was nothing in the evidence of PWs. 1 to 3 to show that they did so in pursuance of the common object of the other persons who were on the terrace at that time. Under the explanation to S. 141 an assembly which was not unlawful when assembled may subsequently become an unlawful assembly, but there, was nothing in the evidence of the three police witnesses to show that this was so or that the other accused exhorted those who fired the guns or knew that the gun would be, fired. There was also nothing to show that the other accused knew that the guns were likely to be fired in prosecution of their common

object. [80A, E-F]

4. Section 151 would be attracted only if there was evidence to show that the assembly had been "lawfully commanded to disperse". There is nothing in the statement of the three police witnesses to show that they gave any such command. They have merely stated that they warned the two factions who were pelting stones, and none of them has stated that any command for dispersal was given by any of them. The High Court therefore erred in invoking sec. 151 I.P.C. for the purpose of convicting the other accused with the aid of section 149 I.P.C. [81A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 224 of 1973.

(From the Judgment and Order dated 3-8-1973 of the Andhra Pradesh High Court in Crl. A. No. 561 of 1971.)

P. Basi Reddy, and A. V. V. Nair, for the appellants.

P. Parmeswara Rao, and T. V. Narasimhachari, for the respondent.

The Judgment of the Court was delivered by SHINGHAL. J., This appeal by the accused is directed against the judgment of the High Court of Andhra Pradesh dated August 3, 1973, by which their acquittal has been set aside and they have been convicted and sentenced for the commission of various offences. Both the courts have referred to the accused and the prosecution witnesses with reference to their serial numbers, and as arguments before us

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have also been advanced with reference to those numbers, it will be convenient to adhere to that method of describing them.

The incident which has given rise to this appeal relates to village Kasanur, within the jurisdiction of Simhadripuram police station in Pulivendla taluk of Cuddapah district. It is alleged that there was long standing enmity between the group of the accused led by A-1, and the group of the prosecution witnesses led by Harishchandra Reddy. The High Court has mentioned the cause of the enmity and the disputes which preceded the present incident. It is alleged that on the morning of January 11, 1970, deceased Ramkrishna Reddy and P.W. 16 went to Simhadripuram to make some purchases and were beaten up by A-6, and A-21. They returned to Kasanur some time thereafter. At about 4 p.m. while P.Ws. 6, 7, 8, 9, 10, 11, 12 and 13 were standing at the house of Subbi Reddy, the deceased went there and reported that incident. P.W. 5 also came running there and intimated that he had been chased by the members of the other party who were armed with spears and guns. All of them then went up the terrace of the house of Subbi Reddy and challenged the other party i.e. the party of the accused) to a fight. The accused came to the terrace of the house of one Somi Reddy which was at some distance from the house of Subbi Reddy. A-2, A-4, A-6 and A-9 were armed with guns and the other accused were armed with spears. Both sides indulged in throwing stones at each other. It so happened that in those days a police party had been stationed in the village because of the strained relations between the two factions. P.Ws. 1, 2 and 3 were members of the police party. They had received intimation from P.W. 21, who was the village Munsif, about the likelihood of a breach of the peace and dispatched report Ex. P.1 to police station Simhadripuram

for obtaining reinforcement. In the mean time, the three policemen reached the place of the incident and found the two parties on the terraces of the two houses. The policemen warmed both the sides, but to no effect and it is said that they saw the two factions hurling stones at each other. It is further alleged that A-2, A-4, A-6 and A-9, who were armed with guns, fired at the party of Harish chandra Reddy on the terrace of Subbi Reddy. Ramkrishna Reddy received gun shot injuries and died. Several other persons belonging to his party received gun shot injuries. The policemen tried to apprehend the accused, but they ran away. The party of the deceased was asked to make a report but as they were not willing to do so, report Ex. P.2 was drawn up by P.Ws. 1 and 2 and was sent to the police station. A case was registered and investigation was commenced by P.W. 30. The dead body of Ramkrishna Reddy was sent for postmortem examination, and so also the injured persons. The case was ultimately tried by Additional Sessions Judge, Cuddapah, who did not find it possible to place reliance on the evidence of the prosecution witnesses and acquitted the accused by his judgment dated April 21, 1971. An appeal was filed against the acquittal. Appellants A-1, and A-2 died thereafter. As has been stated, the High Court has set aside that judgment in respect of the acquittal of A-3, to A-9, A-11, A-12, A-13 and A-19, but has confirmed the acquittal

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of the remaining accused. This is how those who have been convicted have come up in appeal to this Court.

As has been stated, P.Ws. 1 to 3 are the policemen. The first two of them were responsible of the lodging of the first information report Ex-P.2 within an hour of the incident. P.W. 1 was a constable belonging to the police station and was familiar with the names of the accused. P.W. 2 was the 'naik' of the armed police, and P.W. 3 belonged to his force. The High Court has relied heavily on the testimony of these witnesses and the question is whether 'it has committed any error of law in doing- so, or has misread the evidence in, any respect.

It has been strenuously argued by Mr. Basi Reddy on behalf of the appellants that policemen arrived at the place of the incident after everything was over and have falsely claimed that they witnessed the incident. In support of his argument counsel has placed considerable reliance on the statements of these witnesses in the departmental inquiry against them for dereliction of duty, and has also urged that these witnesses could not possibly have been familiar with the names of the accused.

We have examined both these arguments. The High Court has taken note of the fact that P.W. 1 was a local constable who was stationed in village Kasanur not only for the occasion which led to the present incident, but also on earlier occasions including service of summonses. He had therefore opportunities of knowing the accused by name, and it cannot be said that the High Court misread the evidence in taking that view. The High Court has also examined the earlier statements of the witnesses in the departmental inquiry and has taken the view that those, statements were given for the purpose of avoiding an adverse finding in the inquiry. It has also given adequate reasons for holding that they were present at the time of the incident and were reliable witnesses. One "tell-tale" fact which has been taken into consideration in this respect is the injury which was received by P.W. 3 when both sides were throwing stones at each other. P.W. 17, who was the medical officer, attached

to the government hospital at Pulivendla, examined the injury, and the High Court was justified in taking the view that it was inflicted at the time of the incident. So when there was satisfactory evidence to prove the presence of P.W.3 at the time of the incident, it was only natural that P.W. 2, who was his 'naik, should also' have been present there. As P.W. 1 was familiar with the area and was a member of the police party, the High Court rightly took the view that all three of them were present at the time of the incident and witnessed it. The High Court has made a reference to the other evidence bearing on its finding to that effect, and we find no reason to disagree with its view that the policemen witnessed the incident and were reliable in what they have stated. A-2, A-4, A-6 and A-9 fired their guns resulting in the death of Ramkrishna Reddy and the injuries on several prosecution witnesses. Of these A-2 has died, and no other argument worth the name has been made for interfering with the

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order of their conviction and the sentences imposed on them by the High Court. Their conviction and the sentences are therefore upheld.

The question however remains whether the other appellants have rightly been convicted of offences under sections 302, 326 and 324 with the aid of section 149 I.P.C. The High Court has made a reference to section 151 I.P.C. and has taken the view that they were 'members of an unlawful assembly as they continued in it after it had been lawfully commanded by the policemen to disperse.

Section 149 I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew, to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly, is- guilty of that offence. "Unlawful assembly" has been defined in section 141 I.P.C., while section 142 states who can be said to be its member. An unlawful assembly is thus an assembly of five or more persons if the common object of the persons composing it is of the nature specified in items first to fifth of the section. It cannot be urged, for purposes of this case, that any item other than that part, of the third item which relates to "other offence" could possibly be attracted to the present case. It has therefore to be examined whether it has been established by the prosecution that the common object of the accused was to commit any offence.

We have gone through the evidence of P.Ws. 1, 2 and 3 on which reliance has been placed by the High Court. It will be recalled that P.W. 1 was familiar with the factions in the village. The, relevant part of his testimony is that he found about 30 persons of the party of A-1 on the terrace of Reddygari Ramireddy's house, that A-2, A-4, A-6 and A-9 were in that- party and were armed with guns while the others were armed with spears. The fact that those four accused who fired their guns has been stated in the first information report but it does not mention that the other accused were armed with spears. The witness has further stated that the party of Harishchandra Reddy was on the terrace of the house of Subbi Reddy and that both the parties were pelting stones at each other. He claims that the policemen warned both the parties, and when they moved to the house of Bayapureddy, A-2, A-4, A-6 and A-9 shot guns in the direction of Subbi Reddy's house. Now apart from the fact that there is no mention in the first information

report that the other accused were armed with spears, we find that no spear injury was found on the members of the other party. In fact the accused could possibly have no advantage in arming themselves with spears as they were at such considerable distance from the other party that even the stones did not reach anyone in that gathering. P.W. 1 has signed the first information report (Ex-P. 2), and it shows that the party of the accused went upto the terrace "suddenly". Thus after

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examining the entire statement of P.W. 1 we find that it is not possible to reach the conclusion that the other accused were armed with spears, or that they went up the terrace with the common object of committing any offence. P.W. 2 was the 'naik' of the Armed Reserve Police Force, while P.W. 3 was a constable. We have gone through their statements also and the same is the position in regard to them.

The High Court has not found it possible to place reliance on the version of the other prosecution witnesses that all the 25 accused named by them participated in the crime. Reasons for that view have been mentioned in the judgment. Those witnesses were members of the opposite faction, and their testimony has to be examined carefully. The statements of those witnesses are quite similar, and it will be sufficient to refer to the statement of P.W. 4 who has deposed about the strained relations leading upto the last incident and has given all the details about it. He has stated that while they were sitting in the verandah of the house of Subbi Reddy at about 4 p.m. on the day of the incident, the deceased came and told them that he and Anjaneyulureddi were beaten by A-6 and others in Simhadripuram and that P.W. 5 also came running and stated that he was chased by the people of the party of A-1. The witness has further stated that all of them then went up the terrace of Subbi Reddy's house and that he and Rangareddigari Viswanathareddy "called the people of the party of A-1" after going to the top of the house and the accused also came to the terrace of the house of Reddigari Ramireddy and Somireddy. P.W. 5 has stated that "then P.W. 4 and Rangareddigari Viswanatha Reddy went a little forward to the terrace of Rachamalla Krishna Reddy and cried out 'whoever was prepared to fight should (could) come' and 'then all the accused herein and Lakshmi Reddy and Narasimha Reddy who are now dead went upto the terrace of Reddigari Ramireddy.'" It is therefore quite clear that the party of the accused did not go to their terrace of their own accord for committing any offence. It is true that A-2, A-4, A-6 and A-9 were armed with guns and fired them some time thereafter, but there is nothing in the testimony of P.Ws. 1, 2 and 3 to show that they did so in pursuance of the common object of the other persons who were on the terrace at that time. We are mindful of the fact that under the explanation to section 141 I.P.C., an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly, but there is nothing in the testimony of the three police witnesses to show that this was so in the present case or that the other accused exhorted those who fired the guns or knew that the guns would be fired. An offence will no doubt fall within the purview of section 149 I.P.C. even if members of the assembly knew that it was "likely to be committed" in prosecution of their common object or if the offence was such as the members of that assembly knew to be likely to be committed in prosecution of that object. There is however nothing in the statements of the three police witnesses to prove that this was so.

Section 149 I.P.C. will not therefore fasten criminal liability on the other accused.

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As has been stated, the High Court has invoked section 151 I.P.C. for convicting the other accused under section 149 I.P.C. and has made a reference to the warning which was given by the policemen at the time of the incident. Section 151 will however be attracted only if there was evidence to show that the assembly had been "lawfully commanded to disperse." But there is nothing in the statements of the three police witnesses to show that they gave any such command. They have merely stated that they warned the two factions who were pelting stones, and none of them has stated that any command for dispersal was given by any of them. The High Court therefore erred in invoking section 151 I.P.C. for the purpose of convicting the other accused with the aid of section 149 I.P.C.

It would thus appear that there is no reliable evidence to prove that the accused assembled at the terrace of Reddigari Ramireddy's house for the purpose of committing any offence. On the other hand, it has been established from the statements of P.Ws. 4 and 5 that they went there on their aggressive call. There is also no evidence to show that the other members of the assembly knew that those who were armed with guns were likely to, use them or that they exhorted or encouraged the firing. The version regarding their being armed with spears cannot be accepted as it has not been mentioned in the first information report. Moreover, as has been pointed out, spears could not possibly have been used because of the intervening distance and it is a fact that no injury was inflicted on anyone with these weapons. The distance which separated the two parties was go considerable that even stones did not hit anyone. We are therefore unable to uphold the conviction of the other accused with the aid of section 149 I.P.C. and they deserve to be acquitted.

In the result the appeal fails in so far as the conviction and sentences of appellants A-4, A-6 and A-9 are concerned, but it is allowed in respect of the other eight appellants and they are acquitted of the offences of which they have been convicted and sentenced by the High Court. They are in jail and shall be released forthwith.

S.R.

Appeal allowed in part.

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