

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1502 OF 2008

BASAVENI RAVI & ANR.

APPELLANTS

VERSUS

STATE OF ANDHRA PRADESH

RESPONDENT

O R D E R

1. Basaveni Ravi (A-5) and Marri Rajkumar (A-8) are the appellants. They are aggrieved by the judgment and order passed by the High Court in Criminal Appeal No.883 of 2005, dated 24.12.2007, whereby and where under the High Court has confirmed the judgment and order passed by the Id. Sessions Judge in Sessions Case No.200 of 2001, dated 29.04.2005.

2. The circle Inspector of Police, Mandamarri had filed charge sheet against 9 accused in all before the Trial Court for the offence under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860 ("IPC" for short) for having assaulted

and killed the deceased Kumara Swamy, S/o.Gajji Komuramma (P.W.1) .

3. Before the trial court the prosecution had examined in all 23 witnesses, including P.W.1, who is the sole eye-witness of the entire incident. In her evidence before the Trial Court, she has categorically admitted that A-9 was not present on the date of the incident. The Trial Court, taking into consideration the evidence of the prosecution witnesses, (P.W.1 and P.W.2) has acquitted A-1 and A-3 apart from A-9, on the ground that both the aforementioned witnesses had not identified the presence of A-1 and A-3. However, it has convicted A-2 and A-4 to A-8 for the offence noted earlier. This conviction was primarily based on the evidence of P.W.1, who is said to be the eye-witness of the entire incident.

4. Accused A-2, A-4 to A-8 who were convicted by the Trial Court had approached the High Court by filing an appeal under Section 374 (2) of the Code of Criminal Procedure Code, 1973.

5. The High Court after re-appreciating the entire evidence on record, including the evidence of the sole eye witness P.W.1, has thought it fit to acquit A-2, A-4, A-6 and A-7, however, confirmed the conviction and sentence of A-5 and A-8 for the offence under Section 302 read with Section 34 of the IPC.

6. The accused A-5 and A-8, aggrieved by the order passed by the High Court, are before us in this appeal.

7. Before proceeding further, we note that the State has not preferred any appeals against the order of acquittal of A-1, A-2, A-3, A-4, A-6 and A-7. Be that as it may.

8. We have heard Shri D. Ramakrishna Reddy, learned counsel appearing for the appellants and Shri Amit Nain, learned counsel appearing for the respondent-State.

9. We have carefully perused the conclusion reached by the Trial Court and the High Court for acquitting all the accused persons except A-5 and

A-8. The least that we can say is, we are surprised by the judgment and order passed by the Trial Court as well as by the High Court. We say so for the reason that, having acquitted all the other accused persons on the same piece of evidence available on record, could not have convicted A-5 and A-8, though they were charged under Section 302 read with Section 34 of the IPC.

10. In view of the above, we are of the opinion that the benefit of doubt should also be extended to A-5 and A-8 as well. Accordingly, while allowing this appeal, we set aside the conviction and sentence of A-5 and A-8. We direct the release of the appellants forthwith, if they are not required in any other case.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
SEPTEMBER 27, 2012