

CASE NO.:
Appeal (crl.) 299-300 1991

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
KOWTHALAM CHINNA NARASIMHULU AND OTHERS

DATE OF JUDGMENT: 08/12/2000

BENCH:
D.P.Mohapatro,, K.T.Thomas

JUDGMENT:

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J U D G M E N T

D.P.MOHAPATRA, J.

Seven accused persons were charged under Sections 148 and 302 read with Section 149 of the Indian Penal Code. Two of them, accused No.2- Mahanandi and accused no.3 - Eranna were acquitted by the Trial Court and the rest i.e. accused no.1- Kowthalam Chinna Narasimhulu @ Donga Ramudu, accused no.4 - Dadapeer, accused no.5 - Mohidin Peeran, accused no.6 - Khaja Hussain and accused no.7 - Chand Basha were found guilty of the offences charged and were sentenced to undergo rigorous imprisonment for two years for the offence punishable under section 148 IPC and to suffer life imprisonment for the offence punishable under section 302 IPC. The Trial Court further held that both the sentences were to run concurrently.

Being aggrieved by the judgment of the trial court, both, the convicted accused and the State of Andhra Pradesh filed appeals before the High Court. The High Court by the Judgment dated 3.9.1990 allowed the appeal filed by the convicted accused and dismissed the appeal filed by the State. Therefore, the State of Andhra Pradesh has filed these appeals against all the seven accused persons. The prosecution case, as unfolded by the eye-witnesses PWs 1 to 4, runs as follows:

Accused nos. 1 to 3 are brothers, accused 4 to 7 are their followers. Narayanappa, the deceased was a resident of Kallukunta. His son Nageswara Rao (PW1) contested for Sarpanchship of Kallukunta village for which accused no.1 had also filed nomination paper. The deceased had tried to persuade Accused No.1 to withdraw from the contest but his

attempts did not succeed. PW 1 won the election and became Sarpanch. There were some skirmishes on the date of filing of nomination in which Accused No.1 and Accused No.2 had sustained injuries. At their instance a case was registered against the deceased and two others and the same was pending.

On 9.9.1988 the deceased left his village Kallukunta for Kurnool to participate in excise auction scheduled to be held at the office of the District Collector, Kurnool. He was accompanied by his son PW1, his brother PW3 and PWs 2 to 4 and Shakuntamma, wife of PW1 and daughter in law of the deceased. From the village they went in a tractor upto Peddakadubur village. From there they went by a bus to Adoni. The bus reached Adoni at about 11.00 a.m. On reaching Adoni PW1 sent his wife Shakuntamma by a rickshaw to Devi Nursing Home where she was being treated and asked her to wait for him and promised to come after seeing off the deceased. When these persons were waiting at the bus-stand to take the bus to Kurnool the accused persons armed with deadly weapons like hunting sickles (Yerikala sickles) and daggers came out of their hiding in the hostel situated nearby and attacked the deceased. On seeing the accused persons the deceased and his son PW1 started running, the accused persons gave a chase and caught up with the deceased. A1 gave a blow on the head of the deceased on receiving which he fell down and thereafter the other accused 2 to 5 indiscriminately assaulted him with hunting sickles held by them and the accused A6 and A7 stabbed him with the daggers. As a result, Narayanappa sustained multiple injuries and died at the spot.

PW 8 - S.I. of Police, II Town Police Station, on receiving information about the incident at 11.45 a.m. reached there within 10 minutes (at 11.55 a.m.), found the dead body of Narayanappa with multiple injuries lying in a pool of blood. He posted two police constables to guard the dead body and left for the Police Station at about 12.30 p.m. Thereafter PW1 lodged the report before PW8 at the Police Station, on receiving which the latter registered it as First Information Report and submitted copies of the same to all concerned including a copy to the Court (P.5), made entries in the General diary, informed the Inspector of Police PW9 on telephone about the crime and reached the scene of offence at 1.10 p.m. By that time PWs 2 to 4 and Shakuntamma also reached the scene of occurrence. PW8 held inquest over the body from 1.30 to 4.30 p.m., examined PWs 1 to 4 and wife of PW1, seized five bus tickets with blood stains from the dead body (M.O.2) and some other articles also stained with blood, and sent the dead body for post-mortem examination to the Government Hospital at Adoni. PW5 Dr.Sankara Narayana held the post- mortem examination over the body at about 4.50 p.m. on the same day. The doctor found as many as 26 external injuries on the dead body and according to the doctor, injury nos.1, 9, 13, 18 and 19 were fatal by themselves. The said fatal injuries are as follows: Injury 1. A horizontal cut injury of 5" x 1" bone deep extending from left hand upto 2" above left ear. Wound covered with blood clots. Brain matter is seen in middle of wound. On dissection frontal brain, matter lacerated and blood stained. Injury 9 A horizontal injury of 3" x 1" x 3" deep over middle of neck below cricoid cartilages. On dissection neck structures trachea acophags, blood vessels were cut and surrounding structures blood stained. Injury 13 A horizontal stab wound of 3" x 1" chest

deep 3" below and to right of left nipple. On dissection inter costal muscles were cut and corresponding above injury middle of left verticle of heart was perforated of size 1x1/4" x 1/4".Heart was empty. Injury 18 An oblique stab wound of 2" x 1" x abdomen deep in ephygastrium. On dissection abdominal structures are cut and stomache was perforated of 1 inch x 1/2" x 1/4" in the middle corresponding to above injury. Injury 19 An oblique stab wound 2" x 1" x abdomen deep 2" below right costal cartilage through which Omentun seen. On dissection portion of small intestines was perforation of 1" x 1/4" x 1/4".

In the opinion of the doctor the cut injuries could be caused by a sharp and heavy weapon like a hunting sickle and the stab injuries could be caused by daggers. His further opinion was that the deceased appeared to have died 4 to 8 hours prior to the post-mortem examination due to shock, brain haemorrhage and due to multiple injuries. The Magistrate received the FIR Ex.P5 at about 1.15 p.m. and the inquest report Ex.P6 at 5.45 p.m. on 9.9.1988 the date of the occurrence. The prosecution examined in all nine witnesses and DW1 - A.Rajashekhar was the only witness on behalf of the defence. The learned trial judge on assessment of the evidence of the eye-witnesses and the medical evidence believed the ocular evidence of PWs 1 to 4 which was amply corroborated by the medical evidence, accepted the prosecution case against the accused nos. 1 and 4 to 7, held them guilty of the charges under sections 148 and 302 IPC and sentenced them as noted earlier. He acquitted accused nos.2 and 3 mainly on the ground that PW 3 did not state that those accused persons were armed either with hunting sickles or daggers and did not say about any attack by the said accused persons. The High Court, as it appears from the discussions in the judgment, cast a serious doubt about the truth of the prosecution case relying on the time of the occurrence as alleged by the prosecution and some other lacunae in the investigation of the case. The High Court was of the view that the incident in all probabilities happened earlier in the morning and not at 11.30 a.m. and the story as narrated in the FIR was a concocted one. It is relevant to note that the High Court did not discuss the evidence of PWs 1 to 4, the ocular witnesses nor recorded any finding that their testimony is not trustworthy. The Court took exception to non-examination of the conductor of the bus in which the deceased and the PWs 1 to 4 were stated to have travelled from Peddakadubur village to Adoni and for non-examination of the doctor or staff of Devi Nursing Home at Adoni. The Court also observed that PWs 1 to 4 were chance witnesses and therefore their testimony could not be accepted. The prosecution, as noted earlier, mainly relied upon the evidence of the eye-witnesses PWs 1 to 4. Since the High Court has not discussed the testimony of these witnesses in the judgment but has described their evidence expressing a doubt about their presence at the place of occurrence on other attending circumstances; we have perused the evidence of these eye-witnesses to satisfy ourselves about the correctness of the opinion expressed by the High Court on their evidence. We are of the view that the High Court cannot be said to have committed any gross error in appreciation of the ocular evidence of these witnesses. On perusal of the evidence of these witnesses there is ample scope to doubt if they were at all present when the accused persons are alleged to have assaulted the deceased Narayanappa. PW1, who is the son of the deceased, has

stated that on seeing the accused persons coming towards them he and his father started running and while doing so he overtook his father. He has candidly admitted that he did not witness the murder. From the evidence of PWs 2,3 and 4 it is clear that seeing the deceased and his son (PW1) running, they also ran away from the place and went in different directions. Indeed, PW2 has stated that on seeing the accused persons advancing towards them all the persons accompanying the deceased ran away. It is to be kept in mind that the bus-stand, where the deceased and the witnesses were waiting for the bus to Kurnool, is at a junction of several roads. It is on record that the witnesses ran away from the place taking different roads. In the circumstances it is difficult to believe that these witnesses could witness all these accused persons assaulting the deceased in the manner stated in the Court. A dispute was raised about the time of the incident. According to the prosecution it was at about 11.30 a.m. while according to the defence it was at about 8.30 a.m. The time of the incident is relevant in the context of the case of the prosecution that the deceased left his village for Kurnool to participate in the auction for settling country liquor (arrack) shops which was to be held in the Collector's office at Kurnool. It is also on record that the auction was to be held at 10.30 a.m. Then it becomes difficult to accept the prosecution story that the deceased was waiting at the bus-stand at 11.30 a.m. with the hope to participating in the auction. There is also another reason which makes the prosecution case doubtful. It is the case of the prosecution that the accused persons came out from a hostel building located opposite the bus stop where deceased and the eye-witnesses were waiting for the bus to go to Kurnool. Some eye-witnesses have stated that they had been waiting for about half an hour at the bus stop before the attack by the accused persons. If the accused persons were hiding in the hostel building waiting for the deceased then there is no reason why they should wait for half an hour before attacking the deceased. Further, from the materials on record it appears that the village Kallukunta is a faction ridden one on political lines and the deceased and his family members were involved in local politics. It is the case of the prosecution that differences between the parties came to the fore when PW1 decided to contest for the office of Sarpanch against accused No.1 and the deceased tried to persuade the accused no.1 to withdraw his candidature but did not succeed. On a careful consideration of the matter, we are of the view that the High Court was right in holding that the prosecution has failed to establish its case against the accused persons beyond reasonable doubt. Accordingly, the appeals are dismissed.