

PETITIONER:
TALLURRI VENKAIAH NAIDU, & ANR.

Vs.

RESPONDENT:
PUBLIC PROSECUTOR, HIGH COURT OF A.P.

DATE OF JUDGMENT: 21/08/1996

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
VENKATASWAMI K. (J)

CITATION:
1996 SCALE (6)163

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CRIMINAL APPEAL NO. 741 OF 1983
Shri S. Srihari Naidu
V.
State of Andhra Pradesh

O R D E R

In Sessions Case No. 8 of 1980, the three appellants were variously charged and tried along with three other co-accused and the learned Additional Sessions Judge, Nellore Division, Nellore by a judgment dated 24th May, 1980 convicted S. Srihari Naidu, the appellant No. 1 as well as R. Ramasubha Reddy and Ganapam Chella Reddy, the accused Nos. 5 and 6 respectively under Section 120-B read with Section 302 of the Penal Code. A/C has also been convicted under Section 302/109 IPC as well as under Section A of the Explosive Substance Act, 1008. All the three were sentenced to undergo life imprisonment on each count; but all sentences were directed to run concurrently. The trial Court acquitted A-2, A-3 and A-5 and A-8 were also acquitted of some the charges that were framed against them. The convicted accused, namely, A-1, A-C and A-G preferred an appeal in the High Court. The State of Andhra Pradesh also preferred an appeal against the acquittal of A-2 to A-4 as well as against A-1 and A-5 who was acquitted of some of the other offenses. The High Court held that charge under Section of 120-B read with Section 302 IPC was not established against any of the accused persons and therefore set aside the conviction under Section 120-B/302 IPC. But the High Court also allowed the appeal of A-5 and A-6 and set aside their conviction and sentence on all counts. But High Court found the appellant herein A-1 guilty of the offenses under Section 147 IPC and after setting aside acquittal of A-2 and A-3 namely, T. Venkaiah Naidu and S. Mallikarjuna Naidu respectively, they were found guilty under Section 149 IPC. The High Court also held A-2 guilty for the offence under Section 302/140 IPC. A-2 and A-8 are

further held guilty under Section 9 of Explosive Substances Act, 1908 and convicted them accordingly and all the three were sentenced to undergo life imprisonment. The conviction of A-1 and A-3 under Section 8 of the Explosive Substances Act was also maintained but no separate sentence has been awarded on that count. A-1 has filed Cr. A.No. 741/83 against his aforesaid conviction and A-2 and A-3 have filed Crl. A No. 425/83 against the common judgment. We are informed at the very outset by the learned counsel for the appellants that A-1, namely S. Srihari Naidu died during the pendency of this appeal on 2nd August, 1992 and therefore, Crl. A. No. 741/83 abates.

According to the prosecution, the incident occurred on 21st May, 1979 between 8-830 PM when the deceased Parliament Remanareddi, a resident of village Bitragunta-Bengole, had closed his shop. The deceased was running a fancy shop and wine shop in bagole village. He was also a member of Panchayat. A-1 to A-4 are also residents of the same village where A-1 was having a cloth shop adjacent to that of the fancy shop of the deceased. A-1 was also a Sarpanch of the Village and there were political rivalries between the deceased and A-1, A-2 is the son-in-law of A-1 and A-3 is nephew of A-1. According to the prosecution, prior to the occurrence in question, there were certain incidents on account of which certain criminal case was pending against the deceased due to which there was enmity between them. This apart, the A-1 was indulging in cotton market gambling and the deceased made complaints to the police and the Police began to keep watch on the activities of A-1 and hence A-1 was having grudge against the deceased. It is said that since A-1 to A-8 entertained grudge against the deceased, they issued threats to his life. On the date and time of the occurrence, the brothers (P.W.2) of the deceased had closed the shop while the deceased was standing in front of his shop along with his clerk. At that point of time, P.W.s 5, 8 and 9 arrived there. The deceased was talking to them and when they proceeded, P.W.G. arrived there and when they were busy in talking, A-1 to A-3 along with three other persons emerged from behind a lorry standing there and on the instigation of A-1, A-2, and A-3 hurled bombs at the deceased. The bomb hurled by A-2 hit the deceased on his back and exploded. The hurled by A-3 fell near deceased and exploded. The deceased fell down and died instantaneously.

The further prosecution case is that Vijaysena Reddy, P.W.I., the younger brother of the deceased opened the shop, dictated a report to his another brother Valmati Parandham Reddy, P.W-2, and took it to the police Station, Bitrangunta, where he lodged a written report (Exh. P-2) at about 10.30 PM on Inspector, P.W. 23. The police Inspector, P.W.20 recorded the statements of some of the witnesses during the night and statement of others were recorded next morning. An inquest P-25 was prepared between 7 to 9 A.M. next day. Dr. M. Venkataratnamma, P.W. 1G performed an autopsy on the dead body of the deceased, who as per his post mortem report, Exh. P-6, found a single injury on the person of the deceased which is as follows :

<SLS>

"A quadrangular, lacerated, burnt injury in between both the scapular region, measuring about '9' to 10 in length, in all sides. The depth of the wound is about 3" in the middle upto the spinal column, the depth of wound is about 4" to 5", upto the lungs and heart. Both the lungs and posterior surface of the heart, in its lower portion are charred. The is charred, at its lower portion of muscles extends upto the middle of the back, that is 10th thoracic Vertebrae. The

posterior portions of the Vertebrae from 1st to 10th are broken and burnt, exposing the spinal column. Spinal cord is also damaged. Ribs from 2nd to 8th on either side were broken and charred. All the muscles are charred in the middle of the wound, and deeply cancerated, peripherally. The surrounding skin is blackish. about 2" to 3" all round the wound".

<SLE>

In the opinion of the doctor, the deceased died to shock and

massive destruction of the tissues and the spinal cord as result of burn injury. In the opinion of the doctor, death could be instantaneous as the injury was sufficient in the ordinary course of nature of cause death.

At the trial, the appellants and the acquitted accused pleaded false implication due to enmity. However, the learned trial Judge, convicted A-1, A-5 and A-6, as said earlier, which findings have been reversed by High Court so far as A-2, A-3, A-5 and A-6 are concerned. The High Court acquitted A-4 to A-6 but convicted the three appellants, as said above, against which these two appeals have been directed.

The submission of the learned counsel for the appellant is that FIR, Exh. P-2, was prepared after due deliberations and made after a long delay. It was submitted that prior to the report, Ex. P-2, made by intimated the incident to the police by a written report Ex. D-17. He, therefore submitted that Ex.P-2 cannot be regarded as the First Information Report. He submitted that in the FIR, the presence of other witnesses has been mentioned but the presence of P.W.G. is conspicuously missing, who is said to be the star witness of the prosecution. He also submitted that P.W.G. cannot be accepted as eye-witness that for the reason that though he said to be talking to the deceased and hence his presence at the place of occurrence is ruled out. Secondly, since his statement was recorded at about 9 AM, the next morning, after a long delay, it raises a serious doubt about the presence of P.W.G. at the place of occurrence. It has also been submitted that the conduct of P.W.G. is such that it is difficult to place reliance on his testimony. As regards the evidence of P.W.4 and P.W.10, learned counsel urged that no relevance can be placed on them because P.W.4 is the uncle and P.W.10 had worked under the deceased and thus both were interested witnesses.

We have critically examined the evidence on record through the assistance of the learned counsel for the parties and also perused the judgments of the two courts below. It is true that it appears that the report ex.P-2 lodged by P.W.I. was prepared after deliberations. The incident had occurred between 8 to 8.30 P.M. while this report was dictated by P.W.I in the shop and lodged at about 10.30 P.M. after two hours though the police station is situated close-by at a distance less than one mile. In the case diary statement of P.W.G, who is the star witness of the prosecution, the presence of P.Ws 1 and 2 at the place of occurrence has not been mentioned. It is just possible that two brothers of deceased, P.Ws 1 and 2 arrived later at the place of scene after getting information of the occurrence which resulted into late reporting to the police. The presence of P.Ws 1 and 2, therefore, becomes highly doubtful at the place and time of occurrence.

The question, therefore, arises whether there is convincing evidence and material on record to sustain the conviction of the appellants even if the evidence of P.Ws 1 and 2 is ignored. We have examined the evidence of P.Ws. 4,

5, 6, 8, 9 and 10. P.W.4, as said earlier, is the paternal uncle of the deceased who is also having a shop in the same vicinity where the incident had occurred and therefore his presence at the place of occurrence cannot be doubted. He categorically stated that after closing his shop at about 8 PM he went to the centre and saw the deceased talking to P.W.G. in front of his shop and it was at that point of time that A-1, A-2 and A-3 along with two others were seen going towards the lorry standing near the shop of the deceased. He further deposed that A-1 to A-9 and three other accused went behind the deceased and A-1 exhorted to hurl bombs at which A-2 and A-3 hurled the bombs at the deceased. The bomb hurled by A-2 hit the deceased at his back and the bomb hurled by A-3 fell near him and exploded. Similar is the evidence of P.W.G. who deposed that he was working as steam-man in the Loop-shed Bitrangunta and was going to his duty and had reached the place of occurrence where he saw the deceased talking to P.W.s 5, 8, and 9 when they proceeded ahead, the deceased accosted him and started talking to him. It was shortly thereafter that A-1 to A-3 along with three other persons emerged from behind the lorry and on the instigation of A-1, A-2 threw a bomb which hit the deceased on his back and A-8 also threw a bomb which hit the deceased which fell near the deceased and exploded. The statement of A-4 is thus corroborated by the evidence of an independent witness P.W.G. The note of caution sounded for accepting the evidence of a relative witness is that it should be subjected to careful and close scrutiny and if such a witness stood the test of careful and close scrutiny, there is no reason not to accept his testimony. In the present case we find that evidence of P.W.4 not only withstood the said test but is also corroborated by the evidence of an independent witness P.W.G. Nothing turns on the conduct of P.W.G. in going to his place of duty along with his brother and change of his dress etc.

The evidence of P.W.G. has been seriously assailed by the learned counsel for the appellants on the ground that he did not sustain any injury inspite of the fact that two bombs were hurled one which hit the deceased and the other fall near him and exploded. But the fact cannot be lost sight of that the first bomb had hit the deceased. There was hardly any occasion for the first bomb to hit P.W.G. as he covered by the body of the deceased. The bomb particles would have gone side-ways. The second bomb which fell by the side of the deceased also exploded and emitted smoke. It travelled to some other direction as admittedly, the second bomb had fallen by the side of the deceased but no part of it hit even the deceased. It is therefore, difficult to accept that since no injury was caused to P.W.G. by the second bomb, his presence becomes doubtful. As regards the late recording of the police statement of P.W.G. it may be stated, that the fact that he was present at the place of the occurrence became known to the investigating agency only after the mid-night and since P.W.G. had left for duty somewhere in the Loosed where he remained till 6 AM he was not available for interrogation. The police statement of P.W.s 5, 8 and were 9 recorded at the same time when the statement of P.W.6 was recorded. This short delay in recording the case diary statement of P.W.G, for the aforesaid reason, cannot be a valid ground, in the facts and circumstances of the present case, to reject his testimony. The presence of P.W.G. at the place of occurrences is testified by the independent witnesses, namely, P.Ws. 5, 8, 9 there is no reason to disbelieve their the consistent evidence of P.Ws. 4 and 8 coupled with the evidence of P.Ws

5, 8 and 9 coupled with the evidence of P.Ws 5, 8, 9 as well as that of P.W. 10, the implication of the appellants in the crime is fully established.

Learned counsel for the appellants then submitted that High Court should not have interfered with the well reasoned judgment of the trial court and should not have reversed the findings recorded by the trial Court. In support of this submission, learned counsel cited various authorities of this Court. There cannot be cited various authorities of this Court. There cannot be any disputes with regard to the well settled law that the appellants court should be slow in reversing the order of acquittal unless there are good and strong grounds for interference. We have examined the reasoning of the trial court and High Court and find that the reasoning of the trial court in rejecting the evidence 4 8 is highly discrepant and patently erroneous which could not accepted at all. The evidence of P.W.4 has been rejected on the ground that he is an interested witness being an unola of the deceased. But as said earlier, the mere fact that the witness happens to be a close relative is no ground to reject his testimony if his evidence is otherwise found to be truthful. As discussed above we find no infirmity in the evidence of P.W.4. The evidence of P.W.6 and other eye witnesses has been rejected by the trial court on the ground that after the bomb had exploded P.Ws. 4,6 and other witnesses would not have been able to see the miscreants who had hurled the bomb due to smoke after explosion. But this reasoning is not only faulty but perverse and could not accepted. It may be noticed that all the eye witnesses have deposed that they first saw the accused persons A-1, to A-3 and three others emerging from behind the lorry stationed near a place of occurrence and on exhortation by A-1 the other accused A-2 and A-3 hurled the bombs. It would be but natural such exhortation would have attracted the attention of witnesses and they would have seen the accused/appellants hurling the bombs. It is common knowledge that the smoke will follow later after the hurled and exploded. The trial Court was, therefore, patently wrong in holding that the eye witnesses would not have seen the occurrence due to the smoke emitted from the explosion of bombs. The High Court has given cogent and plausible reasons for rejecting the aforesaid finding of the trial court and accepting the evidence of said eye-witnesses, we find ourselves in agreement with the view taken by the High Court.

Learned counsel for the appellants lastly contended that there was failure of electric supply and the electric light was intermittently going off and the shops were also closed by 8.00 P.M. and, therefore, it was not possible for the witnesses to see the accused persons and the incident. But on scrutiny of record we find that evidence is quite contrary to the aforementioned submissions. The evidence goes to show that there was no failure of electricity at the time of occurrence. If the electric failure was no frequent, the shop-keepers wouldn't take the risk and they would keep the Patromax ready for the occasion. In these facts and circumstances of the case we find no grounds for any interference in the impugned judgment.

In the result, CrI. A. No. 425/83 is dismissed. The appellants are on bail. Their bail serve out the remaining sentence. However, CrI. A. No. 741/89 abates due to the death of sole appellant S. Srihari Naidu.