

CASE NO.:
Appeal (crl.) 655 of 1995

PETITIONER:
P. Venkataswarlu

RESPONDENT:
State of A.P. and Others

DATE OF JUDGMENT: 10/12/2002

BENCH:
S. RAJENDRA BABU & ARUN KUMAR.

JUDGMENT:

J U D G M E N T

WITH

CRIMINAL APPEAL NO. 659 OF 1995

ARUN KUMAR, J.

These two appeals arise from the judgment dated 9th April, 1992 of the High Court of Andhra Pradesh acquitting all the accused persons. In this Court Criminal Appeal No.655 of 1995 had been filed by the complainant while Criminal Appeal No.659 of 1995 was filed by the State challenging the order of acquittal passed by the High Court. As per facts on record 24 persons were charged and tried by the First Additional Sessions Judge, Guntur, State of Andhra Pradesh. Seven charges were framed. Accused A.1 to A.5 and A.7 were charged under Sections 148 and 302 read with 149 of the Indian Penal Code while other accused were charged under Sections 323 and 324 of the said Code. The charge under Section 302 was for the murder of Kota Subbarao while the charges under Sections 323 and 324 were directed against some of the other accused persons. The learned Additional Sessions Judge convicted accused A.1 to A.5 and A.7 for offences under Sections 148, 302 read with Section 149 IPC and sentenced each of them to three months' rigorous imprisonment under Section 148 IPC and to undergo life imprisonment for offences under Section 302 read with Section 149 IPC. For the charges framed under Section 323 and 324, all the accused were acquitted. Aggrieved by the convictions and sentences passed against them, the convicted accused preferred an appeal before the High Court while the State preferred an appeal against acquittals so far as the other accused persons were concerned.

The prosecution case is that admittedly there are two factions in the village Manchala District Guntur. One faction belongs to the Congress-I party while the other faction belongs to the Telugu Desam party. The deceased was a leader of the Congress-I party while the accused persons belonged to the TDP. About four months prior to the Assembly Elections held in November, 1989, the deceased was beaten by A.2 and others. On the date of the Assembly Elections also, son of P.W.3 and other associates belonging to the party of the deceased were beaten. On the night of 20th April, 1990, a drama was being staged in the village in which both the political factions were participating. About 500 to 600 people had assembled to watch the drama. The deceased was also among them. The drama started at about 10.00 p.m. After sometime there was some commotion. P.W.2 was beaten by A.1 and A.23. On the intervention of some leaders peace was restored and the drama was resumed. Shortly after

midnight when the drama was still going on, the deceased left for his house. The 24 accused who were armed with weapons including battle axes, spears, iron rods, sticks and soda bottles, chased the deceased. When they reached near the house of Chandu Paramaiah, A.1 and A.2 gave axe blows on the head of the deceased. A.3 also dealt a blow with a battle axe on the head of the deceased. When the deceased entered the house of Paramaiah, A.2 followed him and pulled him out of the house. A.4, A.5 and A.7 also dealt blows with an axe on the head of the deceased. When the deceased fell down, all the accused beat him indiscriminately. P.Ws.2 to 4 and N. Pitchayya intervened, A.6, A.9, A.16, A.20, A.21 and A.23 beat him with sticks. P.W.1, who was watching this drama, came out to answer a call of nature. When he reached the house of Ch. Venkata Narayana, he noticed all the accused persons attacking the deceased. After the attack, the accused left the scene of offence leaving the victim dead. A.15 and A.7 went to the police station which is about 5 Kms. Away and gave Ex.P.24 report to the Sub-Inspector of Police at about 12.45 a.m. on 21st April, 1990. P.W.7 registered the case against six named persons and others. He went for investigations to the village at about 3.00 a.m. P.W.1 who is bother-in-law of the deceased is said to have handed over a prepared report as per Ex.P.6 to P.W.7 mentioning names of A.1 to A.11 and others saying that these accused persons had attacked the deceased with sticks, iron rods and soda bottles and axes. Ex.P.7 is the copy of the FIR. He contacted P.W.7, the Inspector of Police and informed him about the occurrence. P.W.9 went to the village and prepared Ex.P.8 as an Observation Report. He also prepared Ex.P.11 a rough sketch of the scene of occurrence. He held inquest over the bodies of the deceased, examined P.W.1 to P.W.4 and others during the inquest. Ex.P.9 is the inquest report. It is during inquest that the number of accused persons became 24. After the inquest, the dead body was sent for post-mortem examination. P.W.5 conducted the post-mortem examination on 22nd April, 1990. Ex.P.1 is the post-mortem report. According to the post mortem report death occurred due to shock and haemorrhage.

The learned Sessions Judge mainly relied on the evidence of eye-witnesses, that is, P.Ws. 1 to 4 in convicting accused persons A.1 to A.5 and A.7. The evidence of the eye-witnesses P.W.1 to P.W. 4 showed that overt acts were attributed to A1 to A5 and A7. The names of these accused find mention in the FIR, Ex.P.6. However, as per the judgment under appeal, the High Court acquitted all the accused persons. The following points weighed with the High Court for this purpose:

1. FIR, Ex.P.6 was delayed and could be result of deliberations. Non mention of injuries of PW 2 to PW 4 in the FIR was also taken as a factor to discredit the FIR.
2. The eye-witnesses were interested witnesses, there were no independent witnesses.
3. Discrepancy between medical and oral evidence regarding injuries suffered by the deceased.
4. There was no light at the place of occurrence which casts doubt on the veracity of the evidence of the eye-witnesses.

We have heard the learned counsel for the parties. The learned counsel for the appellant Ms. K. Amareswari, Senior Advocate vehemently argued that none of the above noted grounds which prevailed with the High court were valid and according to her, the High Court gravely erred in acquitting the accused on these grounds. She dealt with each ground separately in order to demonstrate that none of these grounds taken individually or together could lead to acquittal of the accused.

So far as the FIR, Ex.P.6 is concerned, the version contained therein is supported by the evidence of PW 1 who, in fact, had lodged the FIR. The crime was committed around mid night i.e. about 12.00 o'clock in the night whereas the FIR was handed over to P.W. 7 as soon as he came to the village after receiving information about the incident in the early morning hours. The Police Station is said to be 5 kms. away from the place of occurrence, therefore, it cannot be said that there was any delay in lodging the FIR. In the FIR names of accused A1 to A11, A17 were mentioned. The FIR further mentions that there were other accused also involved. It was quite natural that all the names could not have been given in the FIR. There is mention in the FIR of the overt acts on the part of accused A1 to A5 and A7. We are therefore inclined to accept the argument of the learned counsel for the appellant that no fault can be found with the FIR, Ex.P.6. Mere non mention of names of all the 24 accused persons and details of injuries said to have been suffered by some of the accused in the FIR does not render the FIR weak or unreliable.

Regarding eye-witnesses being dubbed as interested witnesses, and therefore, unreliable, we have to observe that the account of the incident given by the eye-witnesses is consistent and tallies with each other. The said account also finds mention in the FIR which lends credence to the statements of eye-witnesses about the occurrence. Some of the eye-witnesses themselves received injuries in the course of the incident which establishes their presence on the scene of occurrence. If they were present at the time of incident, there is no reason that they would be telling lies specially when a person had admittedly died. P.W.1 was said to be related to the deceased but that fact alone does not render the evidence of P.W.2 to be ignored. Often it is found that the eye-witnesses are either related to the victim or have some interest common with the deceased. This is so because normally strangers are not likely to be found at the time of occurrence of a crime. Only safeguard in this behalf is, that one has to be cautious in relying on the evidence of such eye-witnesses. When, as in the present case, the eye-witness account given by all the eye-witnesses is natural, consistent and supported by other evidence on record, there is no reason to doubt the statements of the eye-witnesses. It is also to be noted that in the peculiar facts of the present case, independent eye-witnesses could not be available. The entire village is admittedly said to be divided on political lines. The persons belonging to the rival parties would not come forward to give evidence, therefore, only the persons belonging to the political party to which the victim belonged could give evidence. For all these reasons, the decision of the High Court in doubting the veracity of the evidence of the eye-witnesses cannot be sustained.

On the question of discrepancy between the medical and oral evidence of the eye-witnesses, a reference has to be made to the statement of P.W. 5, the autopsy Surgeon. He has given a list of 27 injuries found on the body of the deceased. Injuries No.1 to 6 and 17 are on the head. Injuries Nos. 1,2,3,17,23 and 26 are cut lacerations. The cut lacerations could have been caused by a heavy cutting weapon just like an axe. The eye-witnesses had referred to axe blows given on the head of the deceased by A1 to A3. Only thing is that the autopsy surgeon did not say that the head injuries could have been caused by axe blows. This is the reason for alleged discrepancy between the medical and oral evidence. The cut laceration as stated above could be said to be as a result of axe blows, and therefore, we need not take this as discrepancy between medical and oral evidence. Injuries No.13, 15, 16, 18, 24 and 25 were described by the doctor as stab injuries. These injuries could have been caused by a spear also which is a sharp edged weapon. Therefore, when doctor described certain injuries as stab injuries the

same could well be caused by a spear. Injury No.1 alongwith injury No.17 was itself sufficient to cause death, and therefore, could be described as a fatal injury. The way we look at it, it appears that medical evidence is consistent with oral evidence, it is not possible to say that there is any discrepancy between medical and oral evidence.

About the alleged absence of light at the time of occurrence, it is only to be noted that at least at 3-4 places, it has come in evidence on record that on the electric pole near the place of occurrence, there was electric tube which was lighted and which provided sufficient light. P.W.1 stated in his examination-in-chief that "by the side of the well, there is an electric pole and a tube was fixed and the same was burning". P.W. 2 also stated that a tube light was fitted to an electric pole near the water well and that tube light was providing sufficient light to enable one to witness the occurrence. Again P.W. 3 said the same thing in his examination-in-chief. He referred to a tube light that was fitted to the electric pole near the water well and the tube light was functioning. He specifically stated that he witnessed the occurrence in that light. Thus, the doubt cast by the High Court on the evidence of the eye-witnesses on account of absence of light at that hour of the night when the incident took place, is wholly contrary to the evidence on record. These reasons which were taken into consideration by the High Court for acquitting the accused persons, are therefore, unfounded and have to be rejected.

In the present case, some of the glaring facts noted below are beyond controversy or doubt:

1. The entire village was divided on political lines into two factions. The deceased was the leader of one of the political faction.
2. There have been previous quarrels between the rival factions and the deceased was earlier beaten up by the persons belonging to the opposite faction.
3. The occurrence took place in open field and in the presence of so many persons, several of whom were the aggressors.
4. It is a case of brutal murder of an individual. The deceased received as many as 27 injuries as mentioned in the post-mortem report. Some of the injuries were caused by sharp edged weapons.
5. Keeping in view the fact that the Police Station is 5 kms. away from the place of occurrence and the incident took place at the dead of night at about 12 o'clock, the FIR was lodged promptly and investigation started promptly, almost the entire village was watching the drama which was being staged on that fateful night. The presence of the eye-witnesses who belong to the same village at the time of occurrence was, therefore, natural.
6. When the crime was committed in the open and so many persons were present, it could not said that the eye-witnesses were telling lies. The account of the incident given by the eye-witnesses, as many as four in number, is consistent and tallies with each other. Even to the extent of mention of availability of tube light at the scene of occurrence, all the witnesses are consistent. This shows that evidence of eye-witnesses is natural and credible.

Keeping all these aspects in view and on a careful consideration of the entire evidence on record, we are of the considered view that the High Court clearly erred in acquitting the accused persons on the basis of flimsy and baseless grounds, some of which were contrary to the record. On the other hand, we find that the learned Sessions Judge gave a well considered judgment convicting the six accused. No fault can be found with the judgment of the learned Sessions Judge. Therefore, we set aside the impugned judgment of High Court and restore that of the First

Additional Judge, Guntur, Andhra Pradesh.

The appeals are allowed. The accused persons shall be taken into custody forthwith to serve the remaining sentence as per the sentences awarded to each of them by the Sessions Court.

JUDIS