

PETITIONER:
GOLLA JALLA REDDY & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 25/04/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (4) 587 1996 SCALE (3)791

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

In Sessions case No. 96 of 1983 on the file of the Sessions Judge, Anantpur 10 persons (hereinafter referred to as A1 to A10 respectively) were tried for criminal conspiracy, rioting with deadly weapons and murders of Kalapuram Paramasani Narasimhudu, Golla Jalla Malli Reddy and Golla Jalla Narayana Reddy (hereinafter referred to as D1, D2 and D3 respectively). The learned Judge convicted and sentenced A1 under Section 302 IPC and Section 3 of the Explosive Substances Act for committing the murder of D1 with bombs and A2 under Section 302 IPC (simpliciter) for committing the murder of D2 and under Section 302 read with Section 34 for the murder of D1. A1 and A2 were acquitted of the Other charges and A3 to A10 of all the charges. Against their convictions and sentences A1 and A2 filed two separate appeals in the High Court and the State, in its turn, filed an appeal against the acquittal of the other eight. During the pendency of the appeal A1 died and consequently his appeal abated. By a common judgment the High Court dismissed the appeal preferred by A2 and allowed the other appeal in part by setting aside the acquittal of A3 to A6 and convicting and sentencing them under Section 302 read with Section 34 IPC and affirming the acquittal of A7 to A10. However, considering the tender ages of A4 and A5 the High Court recommended their commitment to Borstal School. The above judgement of the High Court is under challenge in this appeal preferred by A2 to A6 under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and Section 379 read with section 380 Cr.P.C.

2. Bereft of details, the prosecution case is as under:

(a) Golla Jalla Chinnappa Reddy (P.W.1) and A1 to A10, who are inter-related, are residents of Brahmanapalli, which is at a distance of 14 kms. from Gooty in the district of Anantapur. D2 and D3, who were two brothers, also hailed from the same place. Golla Paramasani Pullaiah (P.W.2) is a

resident of Kalapuram, which is 8 kms. away from Brahmanapalli, who was the maternal uncle of P.Ws. 1 and 2 and D2 and D3, was also a resident of Kalapuram. At the material time A1 was working as Branch Postmaster of Brahmanapalli and A2 was Munsif of that village.

(b) In 1981 P.W.1 was elected Sarpanch of his village defeating T. Narayana who was set up by A2 and in that election A1 supported the candidature of P.W.1. However, three months before the incident with which we are concerned in this appeal, ill-feelings developed between PW 1 and A1 over a dispute regarding the house of Golla Chandrasekhara Reddy (PW 7. P.W.7 took the house of one B. Hanumanthu on an annual rent of Rs.60/- out of which he paid him Rs.10/- in advance. Later on he came to know that the house actually belonged to one Yarikala Gampamma and so he purchased the house from her for Rs.100/-. Thereafter when Hanumanthu demanded rent and P.W.7 refused to pay an altercation took place between them and over that issue a Panchayat was held in which A1 and A2 figured as elders on behalf of Hanumanthu and P.W.1 and 93 on behalf of P.W.7. The dispute, however, could not be settled by the Panchayat. A few days later A1, A2 and Hanumanthu assaulted P.W.7 and threw his belongings out of the house. P.W.7 then informed P.W.1 about the incident who advised him to make a complaint, however, did not file any complaint and left the village and started living at Illuru.

(c) A week after that incident D3 was assaulted by A1 and A2 and their men in Gooty and an amount of Rs. 400/- forcibly taken away from him. D3 informed P.W.1 about the incident but did not lodge any formal complaint about the same. This was followed by another incident on September 22, 1982 in which Suryanarayana Reddy, brother of P.W.1, was assaulted near a cinema hall of Gooty and P.W.1 was told about the same. On the same day the three daughters of A1 were assaulted in Brahmanapalli in their house for which one of them, namely, Bhagyalakshamma lodged a complaint against P.W.1, D3 and his another brother. On that complaint a case was registered and a week later P.W.1, his brother Suryanarayana and D3 were arrested and subsequently released on bail. After assault on his daughters, A1 along with A2 left Brahmanapalli and started living in Gooty.

(d) A month later - on October 21, 1982 to be precise P.W.1, P.W.2 and the three deceased went to Gooty to meet their Advocate. On their way back they were arrested under Section 151 Cr.P.C. and Crime No. 102 of 1982 was registered against them. They were produced in Court on the following day, that is, October 22, 1982 and released on bail with a direction to appear on November 2, 1982. To enable them to go to Court on that day together with PW 1, D2 and D3, D1 and PW 2 went to Brahmanapalli on November 1, 1982 and stayed for the night there.

(e) On the following morning, that is, November 2, 1982 PW 1, PW 2 and the three deceased left for Gooty by bus and got down at the bus station there at 9 A.M. They first went to Durga Vilas, a nearby hotel for tea and then, at or about 10 A.M., left for Court on foot along the National Highway with D1 and D3 little ahead of the other three. When they reached a place near the house of one Subbaratnam, A1 and A2 suddenly emerged from the nearby thorny bushes. While A1 was having a hand bag with him, A2 was armed with a hunting sickle. A1 then took out a country made bomb from the bag and hurled it at D1 which hit him on the back and exploded. A1 hurled two more bombs towards D1 which exploded on his face and he fell down crying. When the first bomb was hurled D3 went running towards them and D2 and P.W.2 started

running towards the north. As soon as they reached the flour mill of one Venkata Reddy A3 to A6 came from the side of a Kottam, situated near the mill, armed with billhooks. Seeing them P.W.2 and D2 turned their back and began to run. A3 to A6 chased them along with A1 to A2 who had joined them in the meantime. P.W.2 and D2 then entered into a lane on the western side of the road where D2 was overtaken by them and dragged towards a log which was lying there, He was then made to lie on his back with his neck resting on the log. A1 and A3 to A6 caught hold of D2 and D2 dealt a blow on his throat with a billhooks. A3 to A6 also gave blows on D2 with their billhooks. Seeing this P.W.1 and D3 started running towards the police station. When P.W.1 and D3 were running A7 to A10 appeared there and started chasing P.W.1 and D3. They ultimately succeeded in apprehending D3 and hacked him to death near a pond. A7 to A10 also tried to attach P.W.1 but he succeeded in escaping and reaching Gooty police station at 10.40 A.M.

(f) At the police station P.W.1 narrated the incident to Lakshman Dass (P.W.16), the Head Constable, who made an entry (Ex.P.29) thereof in the general diary book (Ext. P.28). P.W.16, in his turn, conveyed the information to M.G.V. Ramna (P.W.17) S.I. of Police, Gooty who was at Yadiki to attend a Magisterial enquiry along with R. Ekambaram (P.W.19), the Circle Inspector of Police. P.W.17 and 19 then rushed to Gooty and on the way P.W. 19 got down at the scene of occurrence and asked P.W.17 to go to the police station. in the meantime, P.W.1 had started preparing a written report of the incident and before he could complete it PW2 had also reached the police station. P.W.1 handed over the report (Ex.P.1) to P.W.17 which was attested by P.W.2 and on that complaint a case was registered against the ten accused. After registering the case and forwarding a copy thereof to the local Magistrate, P.W.17 went to the scene of occurrence along with P.Ws. 1 and 2. P.W.19 held inquest over the three dead bodies in presence of P.W.1, P.W.1, P.W.2 and Boya Peddaiah (P.W.3). Thereafter the deadbodies were sent for post-mortem examination. On receipt of reports of post-mortem examination and completion of investigation police submitted chargesheet and in due course the case was committed to the Court of Session.

3. To prove its case the prosecution examined 19 witnesses of whom Golla Jalla Chinnappa Reddy (P.W.1), Golla Paramasani Pullaiah (P.W.2), Boya Peddaiah (P.W.3) and Desari Venkataramudu (P.W.4) figured as eyewitnesses. P.W.4, however, turned hostile.

4. The appellants who had earlier pleaded not guilty to the charges, contended, in their examination under Section 313 Cr.P.C. that they had been falsely implicated due to enmity. Though they did not examine any witness in their defence they produced some documents to show that P.W.3 was an interested witness.

5. In his judgment the learned trial Judge first recorded that the prosecution had succeeded in proving that the accused persons had a motive to commit the crime alleged against them. As regards the incident the learned Judge relied upon the evidence of P.Ws. 1 to 3 to the extent they named A1 and A2 as perpetrators of the murders of D1 and D2 and held that P.W.3 was not an interested witness as alleged by the defence. He, however, declined to accept the prosecution case so far as it related to the attack on D3 by A7 to A10 as PW. 1 was the sole eye witness and his evidence was not consistent with the medical evidence.

6. In disposing of the appeals in the manner indicated earlier, the High Court held that so far as the involvement

of A1 and A2 in the offences in question was concerned the findings of the trial Court were fully justified. As regards the acquittal of A3 to A6 the High Court observed that the finding of the trial Judge that there was no evidence regarding the participation of A1 to A6 in the incident and, therefore, it was not safe to convict them was patently wrong for P.W.1 to P.W.3 had consistently deposed that A3 to A6 alongwith A1 chased D2 and made D2 to lie on the log in such a way that his neck rested on the log and A2 then cut the throat of D2 with billhook. The High Court pointed out that the trial Judge was not justified in acquitting A3 to A6 on the specious ground that the eye - witnesses were not able to speak as to on which part of the body of D2, D3 to A6 inflicted injuries and, therefore, there was a reasonable doubt about their participation in the offences. The High Court also took exception to the observation of the trial Court that the medical evidence contradicted the oral evidence as, according to it, there was no contradiction at all. According to the High Court the overwhelming evidence of the eye-witnesses and the medical evidence clearly established that some persons must have caught hold of D2 in the manner alleged by the prosecution. The High Court lastly held that A3 to A6 played active roles in causing the death of D2 and, therefore, they could not escape their liability. In dealing with the prosecution case relating to the attack on D3 the High Court however observed that the trial Court's finding that it would not be safe to convict the accused persons for the above murder relying solely on the evidence of P.W.1 could not be said to be a perverse one.

7. This being a statutory appeal we have carefully gone through the entire evidence adduced during trial and assessed the same keeping in view the judgments of the learned Courts below. That there was no love lost between P.W.1, P.W.2 and the three deceased on the one hand and the accused on the other stands established not only by the evidence adduced by the prosecution but also by the plea of the appellants that they had been falsely implicated due to enmity. In view of this admitted enmity between the parties Mr. Madhava Reddy, the learned counsel appearing for the appellants contended that no reliance should be placed on the evidence of P.Ws. 1 and 2. We are, however, unable to reject their testimonies on that score as unimpeachable evidence on record clearly shows that they were the most probable and natural witnesses.

8. Undisputedly, at the material time, cases were pending against PW 1, P.W. 2 and the three deceased and again on October 21, 1982 they were arrested under Section 151 Cr.P.C. and Crime No. 102 of 1982 was registered against all of them. The order (Ext. P.12), that was passed by the learned Magistrate on the following day on their production indicates that they were released on bail with a direction to appear before him on November 2 1982 at 10.30 A.M. Considered in the above context the claim of P.Ws. 1 and 2 that they alongwith the three deceased were going to the Court at Gooty, when the murders took place cannot be doubted.

9. Mr. Madhava Reddy next contended that no reliance should have been placed on the evidence of P.W.3 by the learned Courts below as he was a chance witness. From the evidence of P.W.3 we get that he hails from Anaganidoddi of Gooty Taluk, which is about three miles away from Brahmanpalli. He knew P.Ws. 1 and 2, the three deceased and all the accused from before. On the fateful day he travelled in the bus in which P.Ws. 1 and 2 and the three deceased were also travelling and he got down at the old bus stand of

Gooty. he claimed to have seen the occurrence while going along the main road from the Gandhi chowk. Desari Venkataramudu (P.W.4), who turned hostile, supported P.W.3 in this regard when he stated that he was also travelling in the same bus and seen P.Ws. 1 to 3 and the three deceased travelling up to Gooty. In fact this part of the evidence of P.W.4 was not at all challenged by the defence. Another piece of evidence which probabalises P.W.3's claim to have seen the occurrence is that he was examined during the inquest held by P.W.19 on the dead bodies shortly after the incident. If really he was not present in Gooty at or about the time the incident took place certainly his services could not have been requisitioned by PW 19 from his village within such a short span for the inquest. While on this point Mr. Madhava Reddy further contended that in the first statement that made at the police station which was recorded in the general diary book (Ext.P/29) by P.W.16, the Head Constable, P.W.1 named P.W.2 but not P.W.3 which clearly indicated that he (P.W.3) was not present at the time of occurrence. We are not impressed by this contention of Mr. Madhava Reddy, for the name of P.W.2 was given in the report in the context of the fact that he was going to attend the Court alongwith them in connection with their case and not for identifying him as a witness who had seen the occurrence. This part, disclosure of all details of the incident including names of witnesses in the oral complaint made to the police was not expected from P.W.1 at a point of time when he had just rushed in to the Police Station for fear of life after having seen three murders being committed in a ghastly manner. For the foregoing discussion the claim of P.W.3 that he had seen the occurrence cannot also be questioned.

10. The next contention of Mr. Madhava Reddy was that even if it was assumed that P.W.3 was a natural and probable witness his evidence so far as it sought to connect A3 to A6 with the murder of D2 could not be relied upon for he did not implicate them in his statement recorded under Section 161 Cr.P.C. Similarly, he contended, P.W.3 did not mention in that statement that A2 had hacked the throat of the deceased with a billhook. To appreciate these contentions of Mr. Madhava Reddy it will be necessary to refer to the evidence of P.W.3 so far as it relates to the murder of D2. P.W.3 testified that after D1 fell down on being attacked by bomb thrown by A1, D3 who was accompanying D1 went hurriedly towards P.W.1, P.W.2 and D2. P.W.2 and D2 then went to the left of the road and began running towards north. When they reached a point near the flour mill of Venkata Reddy, A3 to A6 came from the side of flour mill armed with billhooks. P.W.2 and D2 then came back and entered into a lane towards west. In the meantime, A1 and A2 joined A3 to A6. When D2 had run a distance of 4 or 5 yards from the road, A1 to A6 caught hold of him and he was forced to lie down and was dragged on to a log of wood. There the neck of D2 was made to rest on the log and A2 hacked the throat of D2 with a billhook while A1, A3 and A6 were holding his hands. A3 to A6 also struck D2 with billhooks. P.W.1 and D3 then ran towards the north. In cross-examination P.W.3 was confronted with his statement recorded under Section 161 Cr.P.C. as appearing in its copy furnished to the accused in compliance with Section 207 Cr.P.C., to bring on record that therein he (P.W.3) omitted to mention that D2 was felled down and dragged towards the log, that his neck was kept on the log before A2 struck him and that A2 cut the deceased with the billhook. P.W. 3, however, asserted that he mentioned those facts to the police during investigation. It appears from

the record that while the above questions were being put to P.W.3 the learned Public Prosecutor pointed out to the trial Judge that the witness (P.W.3) did not omit to make the statements pointed by the defence, as would be evident from the original statement recorded under Section 161 Cr.R.C. but, admitted, that those were not in the copy that was supplied to the accused.

11. In his examination-in-chief the Investigating Officer (P.W.19) brought to the notice of the Court the original statement of P.W.3 as recorded by him (Ex.P.47) wherein there was no such omissions to which the attention of the witness was brought in course of his cross-examination (referred to earlier). In cross-examination, however, he admitted that in the copy that was forwarded to the accused there were those omissions. If the above evidence of P.W.19 to be believed then it must be said that there is no basis for the contention of Mr. Madhava Reddy that P.W.3's evidence in Court should not be believed regarding the actual roles played by A2 to A6 in the murder of D2 in view of his failure to mention about it in his earlier version, but if the copy of the statement of P.W.3 as furnished to the accused is the correct one then the defence was legitimately entitled to bring those material omissions on record and rely upon the same. Mr. Madhava Reddy, however strongly urged that Ex.P.47 was subsequently created to fill in the lacuna of the prosecution case. Even we proceed on the assumption that owing to P.W.3's omission to mention the facts to which his attention was drawn (referred to earlier) - in his Statement under Section 161 Cr.P.C. his testimony as to the manner in which D2 was assaulted by the appellants should not be believed still, as our discussion to follow will show, the prosecution case as against the appellants is not affected in any way thereby.

12. It has already been found by us that the claim of the three eye-witnesses (P.W.1, P.W.2 and P.W.3) that they had seen the incident cannot be distrusted. We therefore now proceed to consider the worth of their evidence keeping in view that P.Ws. 1 and 2 being partisan witnesses their evidence needs to be examined with utmost care and caution and confining our attention to the murders of D1 and D2, as both the learned Courts below have exonerated all the accused persons of the charges relating to the murder of D3. After detailing the background of the incident and the circumstances necessitating their attendance in the Court at Gooty on the fateful day, which have been noticed earlier, P.W.1 testified that at or about 10 A.M. when they were proceeding along the Anantapur Kurnool Road, A1 and A2 suddenly emerged from the adjacent bushes. While A1 had a handbag with him A2 was armed with a hunting sickle. A1 brought out three bombs from the bag, one after another, and hurled at D1. The bombs exploded on his body and he fell down dead. In narrating the incident further he stated that D2 & P.W.2 then started running towards the north. When they had reached the rice mill of Venkata Reddy, A3 to A6 came there from the side of a Kottam armed with billhooks and started chasing them. A1 and A2 also joined them. For fear of their lives D2 and P.W.2 entered into a lane but A1 to A6 caught hold of D2 there. He was felled down and dragged towards a log which was lying there. D2 was made to lie on his back with his neck resting on the log and then, A1 and A3 to A6 caught hold of him firmly and A2 struck on his throat with a billhook and then A3 to A6 gave blows to the deceased with billhooks regulating in his instantaneous death. According to P.W.1, D3 had joined him in the meantime. P.W.1 next testified about D3's murder, (which

need not be reproduced for reasons mentioned earlier) and has rushing to the police station for fear of life. P.W.1 was cross-examined at length but the defence could not elicit anything to discredit him except that he had enmity with the appellants. On the contrary, the report (Ext.29) that he gave to the Head Constable within half-an-hour of the incident, corroborates his evidence for, therein he mentioned, that when he alongwith P.W.2 and D1 to D3 were going to attend the Court the ten accused persons (whom he named) came from the thorny bushes near the flour mill and followed them, that A1 hurled bombs on D1 and that they hacked D2 and D3 with hunting sickles and killed them. Though all the details regarding the manner of assault were not given the sub-stratum of the prosecution case finds place therein. both the trial Court and the High Court found, that besides the above report (Ext.29) the written report that P.W.1 gave immediately thereafter to P.W.17 (P/1) - which was treated as the F.I.R.. - also corroborated his statement. In our opinion Ex.P/1 could not be treated as the F.I.R.. as Ex.P.29 clearly disclosed a cognizable offence and in fact police had started investigation on its basis. Consequently Ex. P./1 which has to be treated as a statement recorded under Section 161 Cr.P.C. could not be used for the purpose of corroboration of the evidence of P.W.1. However this finding of ours is of no consequence in the facts and circumstances of the instant case.

13. The evidence of P.W.1 as to the manner in which D1 and D2 were done to death is also corroborated by the evidence of P.W.1 in all material particulars, including the individual roles that were played by A2 to A6 in the murder of D2. In cross-examination, however, it was elicited from him that he did not mention in his statement made under Section 161 Cr.P.C that D2 was made to lie down on the log of wood and also did not state that A3 to A6 caught hold of him when A2 struck him with billhook If in view of the omissions - which, obviously are material and therefore amount to contradictions - we proceed on the basis that the evidence of P.W.1 as also P W 3 - about whose similar omissions we have discussed earlier - regarding individual roles of the appellants in the murder of D2 cannot be relied upon still the fact remains that there is no such contradictions so far as their testimonies seek to prove that A3 to A6 chased D2 and P W 2 when they were rushing for their lives, with billhooks, that A1 and A2 joined them and that thereafter A1 to A6 caught hold of D2 and A2 assaulted him The consistent evidence of the three eye-witnesses in this regard, coupled with the uncontroverted fact that D2 met with his death there with a number of injuries unmistakably proves, independent of the actual role of the six appellants in the assaults itself, that all of them shared the common intention to commit the murder. To put it differently, even it is assumed that the prosecution has failed to conclusively prove as to the actual manner in which the appellants brought about the death of D2 still the circumstances as appearing in the evidence of the three eye-witnesses establishes that all of them shared the common intention to commit the murder.

14. We next find that the ocular evidence of P.Ws. 1, 2 and 3 gets ample support from the medical evidence adduced during trial. Dr. V. Chandrasekhara Reddy (P.W.13) who held post-mortem examination upon the dead body of D2 found the following injuries on his person:

- (i). An incised injury of 3" x 1" x bone deep over the left parietal region;
- (ii). Throat cut at the level of adams apple extending to

the back of neck cutting larynx, oesophagus, carotid blood-vessel and spinal column through the body of 3rd cervical vertebra, spinal cord and muscles of neck on the back upto the skin Head attached to the body through 3" of skin on the back of neck with edges of the skin clean cut. Clotted blood present in and around the injury;

(iii). Horizontal incised injury of 4" x 3" x bone deep over front of left shoulder with underlying head of humerus bone fractured;

(iv). Incised injury of 2" x 1" x skin deep over middle of back of left thigh;

(v). Oblique incised injury 4" x 2" x bone deep over outer side of left knee joint with lateral condyle of femur bone fractured;

(vi). Abrasion of 6" x 2mm over back of chest on left side;

(vii). Abrasion of 1" x 1.2" over front of right leg 6" below knee joint;

(viii). Incised injury of 1/2" x 1/4" x skin deep over inner side of left thumb;

(ix). Incised injury of 1/2" x 1/4" x skin deep over palmar side of middle phalange of right middle finger; and

(x). Incised injury of 1/2" x 1/4" x skin deep over upper inter phalangeal crease of the left ring finger with clotted blood present in and around;

He opined that injury No.2 (which according to the prosecution was caused by A2) could have been caused by a sharp edged weapon like billhook and injury Nos. 6 and 7 sharp edged weapon like hunting sickle.

16. Dr. T. Parhathamma (P.W.14), who held post-mortem examination on the dead body of D1 testified that he found the following injuries:

(i) Lacerated injury on right eye-brow 1" x 1/2" x bone deep transverse;

(ii). Laceration on the left eye brow in the middle verticle 1" x 1" bone deep;

(iii). Laceration on left side of lower lip 1.1/4" x 1" x 1/4";

(iv). Laceration on the left ulna 1/2" x 1/4" x bone deep;

(v). Laceration on the chin 1.1/2" x 1/2" x bone deep;

(vi). Laceration on the middle of back at the level of T-8 to L-2 on the vertebra 6" x 3.1/2" x bone deep with clotted blood in tissues; and

(vii). Laceration 1/2" lateral to the above injury on left side 2" x 1" skin deep. P.W.14 found the surrounding skin of all the above injuries blackened.

On dissection of the above injuries he found fractures of orbital plate of frontal bone, mandible maxillae on either side of nose, T.9 and T.10 vertebral rami on both sides, 9th and 10th on the right side, 9th, 10th and 11th ribs on the left side and skull bone. He opined that the injuries could have been caused by the explosion of country made bombs.

15. On a conspectus of the evidence of the eye-witnesses, particularly that of P.W.3 who is an independent witness, the evidence of the above two doctors and other surrounding circumstances we fully agree with the conclusions arrived at by the High Court in the impugned judgment. The appeal is, therefore, dismissed. The appellants, who are on bail, will now surrender to their bail bonds to serve out the sentence.