

(1994) 10 SC CK 0002
In the Supreme Court Of India
Case No : Criminal Appeal No. 494 of 1983

B. Bhadriah and others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 323

Citation : AIR 1995 SC 564 : (1994) 3 Crimes 806 : (1994) 7 JT 173 : (1994) 4 SCALE 746 : (1995) 1 SCC 262 Supp : (1995) 1 UJ 36

Hon'ble Judges : R. M. Sahai, J; M. M. Punchhi, J; K. Jayachandra Reddy, J

Bench : Full Bench

Final Decision : Allowed

Judgement

K. Jayachandra Reddy, J.—This is an appeal u/s 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr.P.C. The five appellants (original accused Nos. 1, 2, 3, 4 and 5) were tried along with four others for offences punishable under Sections 148, 302/149, 324 and 323 read with 149 I.P.C. for the alleged murder of one Vinod Sagar, the deceased in the case and for causing injuries to P.Ws. 1 and 4 during the same occurrence. The trial Court acquitted all of them. The State preferred an appeal and the High Court allowed the same in respect of these appellants and convicted and sentenced each of them to undergo imprisonment for life and other lesser terms of imprisonment for other offences and confirmed the acquittal of the remaining four accused, the prosecution case is as follows:

2. The deceased, Vinod Sagar, was an Excise Contractor. For the year 1978-79 the deceased along with P.W. 4 and two others had obtained the licence in respect of Ramanathapur arrack shop. In connection with that business, he and P.W. 4 used to visit the shop every evening and remain there till the shop was closed looking into the accounts and then take away the cash. P.Ws. 1 to 3 and two other persons were the employees in the arrack shop. The father of A-8 was a licensee in respect of an adjoining arrack shop at Uppal at a distance of four

kilometres. A-1 and A-7 are the cousins of A-8 having an interest in that arrack shop at Uppal. A-2 to A-6 and A-9 are said to be the associates of A-1, A-7 and A-8. According to the prosecution there were some ill-feelings between the accused and the deceased. On the day of occurrence namely 29.10.78 at about 6.30 P.M. the deceased was going to his shop in a car and A-1 was going on a motor-cycle from Uppal. When the deceased was taking a turn to reach his shop,, his car struck the motor-cycle upon which A-1 was travelling and knocked down the motor-cycle and A-1 and this led to a quarrel and deceased and A-1 abused each other. A-1, however, picked up his motor-cycle and went away towards Hyderabad hurling threats. Later in the night at about 10 O'clock while the deceased, P.W.4 and their employees P.Ws., 1 to 3 and others were at their shop, A-1 to A-9 came there in an auto-rikshaw and on two motorcycles armed with knives and other weapons and attacked the deceased. A-2 first caused a bleeding injury on the right cheek of the deceased with a barber's razor whereupon the deceased ran into the shop and entered the hall. Then all the accused chased him and A-4 stabbed the deceased in the back with a knife. The deceased on receipt of the injury ran into the adjoining room but before he could bolt the door of the room, he was dragged out by the accused and A-4 again stabbed him and the other accused are alleged to have caused various injuries with the weapons in their hands. When P.Ws. 1 and 4 and another employee intervened, they were also beaten up. The accused then left the place. Thereafter P.Ws. 1 and 4 and another person took the deceased, who was still alive; to Osmania General Hospital in the car. The Doctor, who examined him, declared him to be dead. P.Ws. 4 then asked P.W.1 to go to Uppal Police Station and report the matter P.W.1 accordingly went in an auto-rickshaw to Uppal Police Station and gave the report Ex.P.I which was reduced into writing by P.W.10, S.I. who sent P.W.1 to the Hospital for examination and treatment of his injuries. P.W.10 went to the scene of occurrence, prepared an observation report, held the inquest over the dead body and examined the material witnesses. The Doctor, P.W.7, who conducted the post-mortem, found as many as 9 injuries on the dead body of the deceased. Most of them were incised wounds and on internal examination he found that injury No.9, a spindle shaped one, passed through the inter-coastal space and the upper lobe of the lungs and communicated with the left bronchus. He opined that all the injuries were ante-mortem and injury No.9 by itself was sufficient in the ordinary course of nature to cause death P.W.1 was examined by another Doctor, P.W.6 who found on him a fresh incised wound and a swelling over the left knee and a contusion on the scalp. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The prosecution mainly relied on the evidence of P.Ws. 1 to 4, the eye-witnesses and the plea of the accused was one of denial.

3. The learned Sessions Judge examined the case with reference to A-1 to A-5 and A-6 to A-9 separately. A-6 to A-9 were acquitted mainly on the ground that their names were not mentioned in Ex.P.I or in the statements recorded during the inquest. So far as A-1 to A-5 were concerned, the learned Sessions Judge

referred to certain corrections in Ex.P.3, the wound certificate regarding injuries on P.W 1 issued by P.W.6 and also doubted the possibility of P.W 1 having given Ex.P.I. He disbelieved the evidence of the eyewitnesses as against A-1 to A-5 mainly on the ground that the names of these accused were not mentioned to the Doctor before whom the deceased was brought and that in Ex.P.3 the word "unknown" in the sentence "alleged to have been beaten with sticks and knives by unknown people at 11.15 P.M." was corrected to "known". The learned Sessions Judge also observed that earlier statements recorded u/s 161 Cr.P.C. were suppressed. He also pointed certain improvements in the testimonies of P.Ws. 1 to 4 and ultimately gave the benefit of doubt to A-1 to A-5 also. The High Court after a detailed discussion on the evidence of the eye-witnesses observed that the so-called improvements pointed out by the learned Sessions Judge are not at all material and they do not affect the veracity of these witnesses. Regarding the correction of the word "unknown" to "known" in Ex.P.3 the High Court pointed out that it is not at all significant and on that basis the evidence of P.Ws. 1 to 4 particularly the evidence of the injured witness can not be discarded. The High Court also observed that Ex.P.I was promptly given and it contains the names of the five appellants. Ultimately the High Court held that the prosecution has established its case against these five appellants.

4. learned Counsel appearing for the appellants submitted before us that the view taken by the trial Court is not at all unreasonable and the infirmities pointed out by the learned Sessions Judge are of vital importance and that the High Court erred in coming to a different conclusion.

5. Since this is a regular appeal we have heard the learned Counsel at length and have gone through the evidence of P.Ws. 1 to 4 carefully and also other material aspects. It is a case where because of an earlier incident during which the car of the deceased knocked down A-1's motor-cycle, led to the attack on the deceased on the same night in his arrack shop. The presence of P.Ws. 1 to 4 at the scene of occurrence is natural. P.W.1 who is an injured witness and P.W.4 who is also a relation of the deceased took prompt steps to shift the deceased to the hospital. P.W 1 was also examined for his injuries. Naturally he was not expected to give a report to the Doctor. The casual way of filling up the column in the medical certificate does not in any manner amount to recording a statement of the injured witness. Further P.W. 1 has given Ex.P.I to P.W 10 at the earliest moment. In Ex.P.I all the necessary details are given. It is specifically mentioned that at about 11.15 P.M. A-1 to A-5 and five others came to the arrack shop and attacked the deceased. The names of the other eye-witnesses are also mentioned. A reading of Ex.P.I would show that it contains a true and natural version of the incident. Having examined the record we are satisfied that P.Ws. 1 to 4 were present in the arrack shop when the occurrence took place and therefore their evidence is of utmost importance. Their evidence is consistent on all material aspects. P.W 1 was working as an arrack vendor in the shop of the deceased. He deposed that he alongwith P.Ws. 2 and 3 and two others used to work in the shop and on the day of occurrence the deceased coming in his car

accidently struck the motor-cycle on which A-1 was travelling and that led to a quarrel and exchange of abuses. Coming to the occurrence, he deposed that later in the night after deceased and P.W.4 verified the accounts and collected the cash and when they were about to go, the accused came armed. A-1 said that the deceased knocked his motor cycle and abused him. P.W 2 told them that they should not rake up the matter which has taken place earlier. A-4 pushed aside him. A-2 then caused a bleeding injury on the right cheek of the deceased. The deceased ran inside the shop but the accused followed him and A-4 among them stabbed the deceased with a knife in the back and the deceased then ran in the adjoining room but he was dragged and A-4 again stabbed him with the knife on the chest. Then in a general way P.W.1 deposed that all the accused beat the deceased and that he was also beaten by some of the accused on his right hand, left knee and the head but he does not remember as to who caused those injuries to him P.W 1 further deposed that P.W.4 and another worker also intervened and they were also beaten. Thereafter the accused left the scene of occurrence. He also stated that he and P.W.4 took the injured to Osmania General Hospital and the Doctor pronounced him to be dead. Thereafter he went to the Uppal Police Station and gave Ex.P.I. He, however, explained by saying that P.W.10, S.I. who recorded the statement asked only the names of some of the accused and accordingly he mentioned that A-1 to A-5 alongwith five others participated in the occurrence. The evidence of P.Ws. 2 to 4 regarding the occurrence is more or less to the same effect. The presence of P.W.1 at the scene of occurrence thus is fully established and his evidence is corroborated by the medical evidence also. It is significant to note that during the inquest P.Ws. 1, 2 and 4 were examined and in the relevant column the names of A-1 to A-5 alongwith five others are mentioned as assailants. Ex.P.6, the post-mortem certificate coupled with the evidence of P.W.7 shows that the injuries on the deceased must have been inflicted in the manner stated by the witnesses and there is absolutely no scope to doubt the presence of these witnesses and when the accused particularly A-1 to A-5 are known to them, the so-called correction in Ex.P.3 is absolutely of no relevance.

6. learned Counsel, however, submitted that P.Ws. 1 to 4 in their testimonies have also given the names of A-6 to A-9 having participated in the occurrence. However, in Ex.P.I their names are not mentioned except stating that A-1 to A-5 alongwith five others in a body came to the arrack shop. Since the names of A-6 to A-9 though known were not mentioned by P.W.1 in Ex.P.I the courts below rightly gave the benefit of doubt to them but that can not be a ground to doubt the veracity of P.Ws. 1 to 4 regarding the presence and participation of the appellants. We have also scrutinised the answers elicited in the cross-examinations of these witnesses and we do not find anything significant which affects their veracity. However, it is a case where according to P.Ws. 1 to 4, 9 assailants entered the arrack shop. P.W.1 the principal witness, as stated above, attributed specific overt acts only to A-1, A-2 and A-4. No overt acts were attributed to A-3 and A-5 except making an omnibus allegation that all the nine

accused beat the deceased. As noted above there were some incised injuries on the deceased but only injury No.9 was the fatal one. Both the courts below acquitted A-6 to A-9 on the ground that their names were not mentioned in Ex.P.I and convicted the appellants mainly on the ground that their names were mentioned in Ex.P.I. P.Ws 1 to 4 deposed that all the nine accused entered the shop and that among them A-1 first instigated and A-2 and A-4 only inflicted injuries. In this state of affairs, we think it will be safe to convict only A-1, A-2 and A-4 to whom specific overt acts are attributed and whose participation in the attack on the deceased is established by cogent and reliable evidence. A-1 is the principal accused who led others to the arrack shop of the deceased for the purpose of attacking the deceased and A-2 and A-4 actually attacked the deceased and inflicted incised wounds. Thus their case stands on a stronger footing and their guilt is established beyond all reasonable doubt. Though all the five appellants are convicted under Sections 302/49 I.P.C., we under the above circumstances, alter the convictions of A-1, A-2 and A-4 to one under Sections 302/34 I.P.C. and maintain the sentence of imprisonment for life. They are acquitted of other charges.

7. In the result, the appeal is allowed so far Sudhaker Reddy, A-3 and Ramulu, A-5 are concerned and they are acquitted of all the charges and their bail bonds stand cancelled. The appeal is dismissed as against B. Bhadriah, A-1, P. Balakrishna, A-2 and Venkatiah, A-4 subject to the above modification of sentence. A-1, A-2 and A-4, who are on bail, shall surrender and serve out the remaining portion of their sentence of imprisonment for life.