

(2003) 12 SC CK 0061

In the Supreme Court Of India

Case No : Criminal Appeal No's. 232-234 of 1997 with Criminal Appeal No's. 1495-97 of 2003 (Arising out of SLP (Criminal) No's. 3088-90 of 1997)

Gorle S. Naidu

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 201, 302, 307, 323, 324, 326, 341, 342, 397

Code Of Criminal Procedure, 1973 — Section 164

Citation : AIR 2004 SC 1169 : (2003) 6 Suppl. SCR 816 : (2003) 12 SCC 449 : (2003) 10 JT 170 : (2003) 10 Scale 698 : (2004) CriLJ 924

Hon'ble Judges : Doraiswamy Rajuu Raju, J; Arijit Pasayat, J

Bench : Division Bench

Advocate : R. Venkataramani, Satya Mitra Garg, Ashok Panigrahi and Manju Aggarwal, for the Appellant; K. Amareswari and Sushil Kumar, G. Prabhakar, B. Vikash, Sanjay Jain, Adolf Mathew, Anjani Aiyagari, D. Ramakrishna Reddy and D. Bharathi Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Leave granted in SLP(Crl.) Nos. 3088-90/97.

2. These six appeals are interlinked and relate to a Division Bench judgment of the Andhra Pradesh High Court whereby the respondents were acquitted. Criminal Appeal Nos. 232-234/1997 is by Gorle Suryanarayana Naidu (PW-4), the father of the Kurmi Naidu who along with Meesala Jogulu (both of them hereinafter referred to as 'deceased No. 1 and deceased No. 2' by their respective names) lost lives on 10.4.1991 purportedly on the basis of assaults made by respondents-accused persons.

3. In all 39 persons faced trial on the accusations of being responsible for the death of aforesaid two persons. It is to be noted that the trial Court acquitted Gorle Ramarao (A-5), Gorle Laxmanao (A-6), Gorle Satyam (A-12), Meesala

Narayanarao (A-14), Gorle Asirinaidu Kasavayya (A-15), Relli Ramachandra (A-19), Gorle Ramaswamy, Gorle Chinnarao, Gorle Ramamurthy O Dihbadu, Gorle Satyam, Gorle Surappalanaidu, Gorle Papinaidus, Gorle Haribabu, Gorle Venunaidu (A-23 to A-30) respectively), Datti Appayya (A-32), Gorle Sreeramulu, Relli Sanyasapudu, Gorle Sanasappadu, Pisini Satyam, Gorle Bodinaidu, Buri Papudu (A-34 to A-39 respectively). Gorle Raminaidu (A-16) and Potnuru Raminaidu (A-22) were convicted for offence punishable u/s 341 of the Indian Penal Code, 1860 (for short the 'IPC') and sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 500/-. Meesala Chandramouli (A-3), Gorle Ramaswamy (A-4), Gorle Harinarayana (A-7), Muntha Prasadrao (A-9), Pyla Venkatasuri (A-10), Gorle Sanyasapadu (A-11), Gorle Ramakrishna (A-13), Gorle Raminaidu (A-16), Muntha Banoji (A-17), Relli Paoinaidu (A-18), Muntha Pardhasaradh (A-20), Gorle Ramana (A-21) and Potnuru Raminaidu (A-22) were convicted for offence punishable u/s 324 IPC and sentenced to undergo RI for two years and also to pay a fine of Rs. 500/- each. Gorle Asirinaidu (A-1), Gorle Vasudevarao (A-2) and Gorle Mohanrao (A-3) were convicted for the offence punishable u/s 302 IPC and each was sentenced to undergo imprisonment for life. The sentences of imprisonment imposed on A-16 and A-22 were directed to run concurrently.

4. Three appeals were filed before the Andhra Pradesh High Court, two by the convicted accused persons, and one by the State against acquittal of the accused persons as noted above.

5. Sans unnecessary details the prosecution version as unfolded during trial is as follows:

6. The deceased persons Kurmi Naidu and Meesala Jogulu were residents of Patharlapalle village. The deceased Kurmi Naidu was the second son of the first wife of Gorle Suryanarayana Naidu (PW-4). Kurmi Naidu was a student of Bachelor of Engineering at the relevant time. There was a fire accident in their village i.e. Patharlapalle wherein more than four hundred houses were burnt. The Government and the insurance company sanctioned Rs. 500/- and Rs. 1,000/- respectively to owner of each of the houses which was burnt. A group of persons headed by Hari Babu (A-29) started saying that they had got sanctioned the amount and asked the recipients to pay Rs. 100/- each. The persons, who did not pay the amount so demanded came and complained to PW-4. On that score a group rivalry started. One group was headed by A-29 and the other group by PW-4. In the year 1989, G. Ramarao (A-5) started 'Indira Priyadarsini Yuvajana Sangam'. The said Sangam started collecting Rs. 50/- from each of the members. Whenever any village refused to join the Sangam, the members of that Sangam used to damage their agricultural implements like carts etc., and also the crops. The said Sangam entertained a grouse against PW-4 thinking that he was causing obstruction to their activities. About one year prior to the death of the deceased (on 10.4.1991) all the accused and some others attacked the house of PW-4 by hurling bombs. As there was no safety in the village, and

threat to his life, PW-4 started living in the house which is situated in his land at Nakkalacheruvu. Three months prior to the present incident the deceased Kurmi Naidu came down to Patharlapalle from Madras. All the household supply cards which were taken away by the group of A-29 in his village were kept in the house of A-15. So some residents of Patharlapalle sent a petition to the Mandal Revenue Officer who came to the house of A-15 (Gorle A. Kasavayya) and seized 375 cards. This led to further grouse against PW-4 as he was considered responsible for such seizure of the household supply cards. Thereafter, all the accused decided to do away the life of PW-4. Gorle Ramarao (A-5) is the President of Yuvajana Sangam. Some of the accused and other villagers are members of the Sangam. On 23.12.1990 PW-5 accompanied the deceased to Visakhapatnam. On return from Visakhapatnam, at Ranasthalam one Komati Satyam informed the deceased and PW-5 that Haribabu and his group were lying in wait for Kurmi Naidu on the road leading to Patharlapalle, and thereafter they changed their route and proceeded to Nakkalacheruvu via Theppalavalasa. Due to fear of the Sangam headed by A-5 some persons joined in that Sangam. A-5 asked the members to commit thefts of coconuts or carts. Some amounts were collected in the name of Yuvajana Sangam and spent away by A-5 for consumption of alcohol. The members of the Sangam used to beat the followers of PW-4 and also took away household supply cards from their houses and kept them with A-15.

7. Three weeks prior to the death of deceased when PW-4 was present in his house, he heard A-2, A-3, A-9, A-10, A-17 and A-37 and some others were talking in the Sangam, and it was decided to do away with the life of PW-4 and his son (deceased Kurmi Naidu). One day prior to death of deceased, when PW-9 went to the bank at 12 noon, he found A-1, A-2, A-3, A-5, A-10, A-18, A-19, A-26 and A-37 and some others and at that time A-37 was telling others that Kurmi Naidu had gone to Srikakulam and while returning to the village he should be done to death near Haribabu's garden, which was suitable for the purpose. One day prior to the death of deceased, G. Ramana (PW-10) was proceeding to the village at about 11 p.m. and when he peeped through beneath the eaves of cattle shed of P. Ramamurthy (PW-2) he found all the accused persons. He heard telling A-29 to other accused that the deceased Kurmi Naidu and his father were coming in their way and therefore they have to be killed. He found liquor bottles with glasses. On the next day PW-10 informed PW-4 all that he had heard. But PW-4 did not heed to his words. On the date of occurrence at about 2 p.m. while he was returning from his land, he saw A-3 armed with crowbar like spear, A-1 armed with wooden plank and the remaining accused persons armed with stout sticks proceeding towards Kosta side from Peddaguidibadi.

8. On the date of occurrence i.e. 10.4.1991 at about 9 p.m. PW-1 left for Srikakulam, where he collected some amount from S.M. Pyarijan (PW-17) and after purchasing a dhoti he came to Kasta junction. At that time both the deceased (Kurmi Naidu and Jogulu) were coming on a motorcycle. When PW-1 made a request to them for a lift, they agreed and all three were proceeding

towards Patharlapalle village on the motorcycle. Similarly, V. Sreeramulu (PW-2) was returning to Surampeta village after handing over the cycle which he had hired from P. Jagannadham (PW-18) at Kosta junction. D. Ankamma (PW-3) after collecting cashew nuts and mangoes was on way to her house at Patharlapalle in the afternoon. When deceased 1 and 2 reached about one kilometer after Derasam near the mango grove of A-29, A-1 armed with a wooden plank beat deceased (Kurmi Naidu) on his head. Thereafter, the motorcycle proceeded further to a distance of 50 yards and at that place there is a culvert. At that time A-4, A-12 and A-25 placed a cart across the road. Therefore, the deceased persons and PW-1 stopped the motorcycle. A-5 and A-6 beat deceased (Kurmi Naidu) with stout sticks on the head. When the deceased (Jogulu) questioned the accused about such highhandedness, A-2 beat him with a stout stick on his head and as a result of such assaults, deceased Jogulu fell down. Thereafter A-4, A-7, A-9, A-10, A-11, A-13, A-26 beat deceased Kurmi Naidu indiscriminately. When deceased Kurmi Naidu fell down. A-3 poked on his throat with a spear. Then A-1, A-4, A-7 and A-9 tied the deceased Kurmi Naidu with a rope and carried him towards eastern side. A-23, A-24, A-27 and A-28 tied deceased Jogulu with a rope and also carried him towards eastern side. When some of the accused were saying that PW-1 should not be allowed to live and thought of throwing him into a well, he ran towards eastern side. But fell down at Lankalacheruvu tank bund. Then some of the accused beat him and tied him in the cattle shed. At about 7 p.m., some of the accused came there and untied him and threatened him that he should not reveal the incident to anybody and if he revealed the same, he would be killed. Thereafter PW-1 went to his house and informed about the incident to his elder brother Silla Arjuna.

9. The Sub Inspector of Police, Jagannadharajapuram N. Rama Rao (PW-24) received a phone message about the kidnapping of Kurmi Naidu on 10.4.1991 at about 5.30 p.m. Then he immediately proceeded to Patharlapalle and he was told by the police personnel present in the picket that persons were talking about kidnap of deceased Kurmi Naidu. At about 9 p.m., the Inspector of Police namely, Kamalanadha Rao came to Patharlapalle. Then they received a vague information that PW-1 who is resident of Silapeta had sustained injuries. Thereafter, the Sub-Inspector and the Inspector of Police proceeded to Silapeta and found PW-1 with injuries. On the basis of PW-1's narration, PW-24 scribed a report. The Sub-Inspector went to the police station and registered a case. He sent the original first information report to the Court. When the Inspector of Police tried to send PW-1 to the hospital, he refused. Then PW-25 examined PW-1 and recorded his statement and seized M.Os. 6 to 8 in the presence of mediators under mediator's report. Then the Inspector of Police, the Sub-Inspector and other police personnel formed a special party and combed the area in search of the dead bodies of the deceased in the nearby thrashing floors. On 11.4.1991, early morning at about 5.45 a.m. they noticed two dead bodies in the mango grove of A-25, and the motorcycle was also found nearby. Thereafter they noticed the place of occurrence which is at a distance of about one furlong from the place

where two dead bodies were found.

10. On the basis of information lodged, investigation was done and on completion thereof charge sheet was filed for the alleged commission of offences punishable under Sections 147, 148, 201, 307, 323, 326, 341, 342, 397, 302 read with Section 149 and Section 120B and 109 IPC. During the trial, Gorle Lottayyagari Satyam (A-31) died and case against Muntha Pentadu @ Barrodu (A-33) was separated as he had absconded. PW-4 who is the father of deceased Kurmi Naidu was stated to be the intended target. Reliance was placed by the trial Court on the evidence of PWs 1, 2 and 3 to conclude that accusations against some have been established, though against others it was not credible and therefore benefit of doubt was extended to them. The High Court by the impugned judgment found that the prosecution version was full of holes, did not appear credible and the so-called eyewitnesses' evidence does not inspire confidence. The evidence of PW-1 was held to be unreliable, as the same appeared to be the outcome of careful planning and deliberation. Though he claimed to have sustained several serious injuries, he did not go to the hospital for treatment for nearly three days. He did not indicate the names of all the assailants who allegedly had beaten him. According to him, after the incident, he went to his house and told his brother that person of Peddagudibadi and Thatigudibedi had beaten him and the deceased. Though he knew the names of the accused persons prior to giving the information, he did not name them specifically. There was delay in lodging the report and no explanation was offered for it. There was also considerable delay in sending the FIR to the Court. There was no reason as to why PW-4 did not lodge the report to the police though the police outpost was situated just in front of his house, if he was really informed by PW-1 and PW-3 as claimed by them. It was noticed that the prosecution version was also incredible in the sense that if the accused persons who were 39 in number had the motive of killing PW-4, they could have done so in the village instead of going to the mango grove of A-29 and waiting for coming of deceased Kurmi Naidu and then attack him without any motive for doing so. Neither of the deceased was their target, and they did not have any motive for killing them. In a faction-ridden village when two rival groups were craving for the blood of each other, the prosecution version lacks credibility and is full of inconsistencies. The trial Court was of the view that entire evidence was not to be discarded, and even taking note of the improvements, discrepancies, the evidence was sufficient for conviction of some of the accused persons. Accordingly, as noted earlier, some of the accused were convicted and others were acquitted. Judgment of the trial Court was assailed by the convicted accused questioning their conviction and by State challenging the acquittal. By a common judgment, three appeals (two by the accused and one by the State) were disposed of. The High Court noticed that there was considerable delay in lodging the complaint, recording statement of the witnesses and there was no cogent material for statements. The correct yardstick to be applied for evaluation of evidence was not done by the trial Court and vague conclusions were arrived at. The trial Court failed to notice that the

prosecution tried to improve its case from stage to stage and from one witness to another. That being so, the prosecution version collapsed on account of incredibility in it. Consequentially, the High Court felt that the accused persons were entitled to acquittal and accordingly directed. The State's appeal was consequentially dismissed.

11. In the present appeals, learned counsel for PW-4, father of deceased No. 1 and the State contended that the approach of the High Court is fallacious. Considering the large number of accused persons, minor discrepancies, in evidence should not have found favour with the High Court to direct acquittal. It was submitted that PW-1 was afraid apprehending danger to his own life after seeing the manner in which the accused persons assaulted and killed two innocent persons. Merely because he did not go for medical examination immediately, though asked by the police, that cannot be a ground sufficient to discard his credible evidence. Merely because PWs 1, 2 and 3 were in some way related with the accused persons, that cannot be a ground for discarding their evidence. PW-1 was an injured person and, therefore, his evidence should have been acted upon, as he was sufficiently explained his presence at the spot and has also indicated why he happened to be at the spot of occurrence. Similarly, the non-lodging of information for long cannot be a suspicious circumstance when one considers the mental condition of PW-4 the father. he immediately went out to search for the dead bodies, and was told on the next day morning about finding of the dead bodies. Thereafter, the information was lodged around 11.30 a.m.

12. It was further submitted that the High Court did not analyse the evidence in detail and in a cryptic manner accepted the submissions of the accused persons and directed acquittal.

13. Learned counsel for the accused on the other hand submitted that the High Court has analysed the evidence after considering the findings recorded by the trial Court. It has highlighted as to how the prosecution version does not inspire confidence. It is to be noted that originally there were 39 persons. A-31 died during trial and so far as A-33 is concerned the trial was separated. The trial Court acquitted 21 persons on the same evidence and convicted 16. The evidence is so full of contradictions, that the benefit extended to 21 acquitted persons should have also been applied logically to the persons who were convicted by the trial Court, and the High Court corrected the legal infirmities which the trial Court did not notice and came to the right conclusion about innocence of the accused persons. In any event, it was pointed out that PW-1 does not speak of any attack on the deceased by A-2. According to him deceased Jogulu (D-2) has received a single blow which caused his death and the same was inflicted by A-10 who was acquitted by the trial Court. PW-1 categorically involved A-10 as the assailant of D-2. Though PWs 2 and 3 named A-2 as the assailant, that itself improbabilities the prosecution version. Only one blow was held to be a fatal blow and it could not have been inflicted by A-2 and A-10

separately. As there is inconsistency as regards who is the assailant of D-2, the benefit of doubt was clearly available and the High Court has held this to be a factor for acquitting A-2. The evidence of PW-2 and PW-3 show that during investigation they did not name the accused persons categorically. In a vague way, it was stated that supporters of A-7 had hit the deceased. To a similar effect was the evidence of PWs 1 and 3. PWs 2 and 3 have also accepted about non-mentioning specifically names of the accused persons to be the assailants. So far as PW-3 is concerned, she stated before the Magistrate in her statement recorded u/s 164 of the Code of Criminal Procedure, 1973 (for short the 'Code') that the occurrence took place at 10.00 a.m. This is at great variance with the prosecution version as unfolded during trial. Additionally, she was not available for a period of 3 days and her statement was not recorded. No explanation was offered for her absence. Accordingly, it was submitted that the High Court's judgment does not suffer from any infirmity to warrant interference at our hands.

14. Though mere acquittal of large number of co-accused persons does not per se entitle others to acquittal, the Court has a duty in such cases to separate the grain from the chaff. If after sieving the untruth or unacceptable portion of the evidence residue is sufficient to prove the guilt of the accused, there is no legal bar in convicting a person on the evidence which has been primarily disbelieved vis-a-vis others. But where they are so inseparable that any attempt to separate them would destroy the substratum on which the prosecution version is found, then the Court would be within its legal limits to discard the evidence in toto. In the aforesaid background, the evidence of PWs 1, 2 and 3 who are stated to be eyewitnesses is to be analysed. The High Court has doubted the truthfulness of the PW-1 who claimed that he did not get medically examined being afraid of the accused persons. That is clearly unacceptable. He claimed to have stated before the police officers about the incident and on the basis of that the first information report was recorded. Thereafter, there was no reason for him to be apprehensive as claimed not to go for medical treatment. If really he was so terrified it is not understood as to how after two days the fear vanished and he went for treatment. The conduct of PW-4, the father of deceased No. 1 is equally shrouded in mystery. Though the Police post was just in front of his house, he did not choose to inform the police and the FIR was lodged after considerable length of time. Though in all case delay in lodging the FIR does not attract suspicion, yet on the facts of a particular case the same is certainly a factor to be considered. In the case at hand, in the absence of any plausible explanation for the delay, it certainly was a suspicious circumstance making the prosecution version vulnerable. In this case the occurrence allegedly took place at about 4.00 p.m. on 10.4.1991. FIR was lodged at about 11.30 p.m. and reached Court at about 10.00 a.m. on 11.4.1991. The delay, considering the fact that there was police outpost just in front of PW4's house and Court was at a very short distance, has not been explained. Additionally, as rightly submitted by learned counsel for the accused-respondents, A-2 was not indicated to be the author of the assaults so far as deceased Jogulu is concerned. There is clear contradictions

between the version of PW-1 on the one hand and PWs 2 and 3 on the other as regards the assailants of deceased No. 2 (Jogulu). The evidence of PW-3 who claimed to have informed PW-4 is equally baffling. She has accepted before the Magistrate in her statement recorded u/s 164 of the Code that the occurrence took place at 10.00 a.m. One more thing which needs to be noticed to cast doubt on the evidence of PW-1 is that he claimed to have received the money from PW-17, at about 2.00 p.m. and then to have returned. Thereafter he had left for returning home. On the contrary PW-17 states that money was paid at 11.00 a.m. That itself throws doubt regarding the possibility of his presence at the alleged time of occurrence. Several other factors which throw considerable light on vulnerability of the prosecution version are the alleged search by PW-4 and others for the dead bodies. According to the prosecution version, the dead bodies were found 15 to 20 yard from the culvert near which the alleged occurrence took place. It is highly improbable that when PW-4 went to searching the dead bodies on allegedly getting information about the assaults, they could not trace the bodies. The plea that he could not lodge the FIR and had to wait for searching by police which purportedly got the dead bodies early in the morning is equally implausible. Even if that is accepted for the sake of argument it is absolutely not explained in any manner why the FIR could not be registered immediately thereafter and several hours had to pass by. Though the FIR is not supposed to an encyclopedia of the factors concerning the crime, yet there must be some definite information vis-a-vis the crime. That does not appear to be the case at hand. Similarly, PWs-2 and 3 accepted that they did not specifically name any accused person during investigation, and only said that followers of A-7 were the assailants. That is not sufficient when definite names were stated in Court. This is not an elaboration of a statement already made, and on the contrary is a vital omission. Certain other factors, which otherwise would not have been of much relevance, have assumed importance in the present case. If PW-1 had stated before the police, the details as contained in the FIR, there was really no necessity of calling a dog squad on 11.4.1991. This to a great extent shows that the police were not sure who the assailants were. Admittedly, dog squad was taken to the place of occurrence at about 1.00 p.m. on 11.4.1991, and dogs were taken to various houses in the village to know about the assailants. PW-24's statement that dogs are taken when assailants are not known is very significant. It cannot be said that view taken by the High Court is not a possible view.

15. The respective stands need careful consideration. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. the paramount

consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Others Vs. State of Madhya Pradesh, . The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , Ramesh Babulal Doshi v. State of Gujarat 1996 (4) Supreme 167, Jaswant Singh Vs. State of Haryana, , Raj Kishore Jha v. State of Bihar and Ors. 2003 (7) Supreme 152, State of Punjab Vs. Karnail Singh, and State of Punjab Vs. Pohla Singh and Another, and Suchand Pal Vs. Phani Pal and Another, .

16. That being so, it would not be appropriate in the circumstances of the case to interfere with the elaborately discussed and well-reasoned judgment of the High Court. the appeals fail and are dismissed.