
(1997) 07 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No's. 411 with 412 and 413 of 1991

Pratapneni Ravi Kumar alias Ravi and another, etc.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (1998) ACR 64 : AIR 1997 SC 2810 : (1997) AIRSCW 2811 : (1997) 2 ALD(Cri) 242 : (1997) 2 ALT(Cri) 389 : (1997) 2 Crimes 32 : (1997) 6 JT 81 : (1997) 2 PLJR 138 : (1997) 4 SCALE 586 : (1997) 11 SCC 50 : (1997) 6 Supreme 332

Hon'ble Judges : S. P. Kurdukar, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Nanavati, J.—These three appeals arise out of the judgment and order passed by the High Court of Andhra Pradesh in Criminal Appeal No. 933 of 1989. As they have arisen out of the same judgment, they were heard together and are disposed of by this common judgment. Criminal Appeal No. 411 of 1991 is filed by original accused Nos. 4 and 6 who were convicted under Sections 148, 452 and 302 read with 149 IPC along with accused Nos. 1 to 6, 7 to 10 and 13 and whose convictions and order of sentence have been confirmed by the High Court. Criminal Appeal No. 412 of 1991 is filed by original accused Nos. 8 and 10 whose conviction u/s 324 IPC only is confirmed by the High Court. Criminal Appeal No. 413 of 1991 is filed by the State as accused Nos. 1 to 3, 7 to 10 and 13 came to be acquitted by the High Court for the offences punishable under Sections 148, 302 read with 149 and 452 read with 149 IPC.

2. In all 14 accused were tried for committing murder of one Veerabhadram of Katnanchikal Village and causing hurt to his wife Saraswati, in the Court of the Sessions Judge Khammam, in Sessions Case No. 121 of 1988. It was the prosecution case that Village Kamanchikal is divided into two political factions.

Veerabhadram belonged to the Communist Party of India and the accused belonged to the opposite faction CIP(M) and TDP. There were previous clashes between the two factions which had led to filing of criminal cases and posting of a police party in that village. On 20.9.1987 at about 6 a.m. there was an attempt on the life of one P. Anantharamulu alias Babu, brother of accused No. 1 and a member of the CPI(M) on the outskirts of that village but towards adjoining village Ramannapet. As a retaliatory measure A-1 along with A-2 to A-14 who belonged to CPI and TDP formed themselves into an unlawful assembly, the common object of which was to cause death of Veerabhadram (hereinafter referred to as the deceased). Thereafter they went to the hut of the deceased armed with axes, knives, spears and sticks at about 7 a.m.. Seeing this mob of the accused two daughters of the deceased who were sitting outside the hut alerted him. So he immediately bolted the door from inside. After reaching there, A-1, A-2, A-4, A-6 and A-8 broke open the door and went inside the hut while others remained waiting outside in the courtyard. The accused after entering the hut said that their party man was attacked and thereafter they by dragging the deceased took him out of the hut in the courtyard. All the accused then started beating the deceased. When Saraswati PW. 1 wife of the deceased tried to intervene she was beaten by the stick portion of their spears by A-8 and A-10. When PW. 3 Venkatalaxmi and other minor daughter Vijaya tried to save their father they were pushed away by A-1. When Venkatakrishnan PW. 2 and Aluri Raja PW. 5 pleaded for mercy and tried to intervene they were threatened with serious consequences. All the accused thereafter left that place believing that the deceased had died. At about 6.40 a.m.. Prabhakar Rao, (PW. 20) who was Sub-Inspector of Police and Incharge of Khammam Police Station, had received information regarding assault on Anantharamulu and the tense situation in the village. So he went to Ramannapet and reached there at about 6.45 a.m.. He saw injured Anantharamulu being taken in an autorickshaw. So he directed them to take him to the Government hospital. He also came to know about the assault on the deceased. So he proceeded to village Kamanchikal reached the hut of the deceased at about 7 a.m.. As he found that the condition of the deceased was serious he immediately arranged a rickshaw and sent him to the Government hospital at Khammam. He recorded his statement (Exh. P7) in the hospital at about 9 a.m.. As the condition of the deceased continued to be serious his dying declaration (Exh. P.5) was also recorded by the Munsif-Magistrate of Khammam at 10 a.m.. The deceased died at about 10.45 a.m..

3. All the accused were accordingly tried for commission of the offences punishable under Sections 147, 148, 452, 302 read with 149 IPC. Accused A-8 and A-10 were additionally charged and tried for the offence punishable u/s 324 IPC. In order to prove its case the prosecution relied upon the two dying declarations Exhs. P.5 and P.7 made by the deceased and the evidence of eye-witnesses PW. 1 Saraswati, PW. 2 Venkatakrishnan, PW. 3 Venkatalaxmi, PW. 5 Aluri Raja and PW. 6 Rama Rao. The learned trial judge found both the dying declarations Exh. P.7 and P.5 reliable and sufficient for the purpose of believing

the presence of the accused and the role played by them. He also found the evidence of PWs. 1, 2, 3 and 5 as consistent and reliable as it did not suffer from any infirmity and their presence was natural at the scene of the offence at that time. Though the witnesses belonged to a rival faction they had no personal enmity with any of the accused; and, therefore, the learned judge thought it safe to accept their evidence. Accordingly he believed the presence of all the accused and their participation in commission of the offence. However, by way of extra caution he gave benefit of doubt to A-5, A-11, A-12 and A-14 and acquitted them as no specific overt acts were attributed to them. He convicted A-1 to A-4, A-6 to A-10 and A-13 for the offences punishable under Sections 148, 452 and 302 read with 149 IPC. He also convicted A-8 and A-10 u/s 324 IPC. For the offence punishable u/s 324 A-8 and A-10 were sentenced to suffer RI for six months.

4. The accused challenged their conviction and sentence before the High Court. No appeal by the State was filed against the acquittal of A-5, A-11, A-12 and A-14. The High Court after reappreciating the evidence concurred with the trial court that the incident had taken place partly inside and partly in front of the hut of the deceased. The High Court also agreed with the finding of the trial court that the evidence of eyewitnesses PW. 1, PW. 2, PW. 3 and PW. 5 was reliable and trustworthy and their presence at the scene of the offence could not be doubted. However, in view of the discrepancy noticed by it in the two dying declarations namely that while in Exh. P7 the deceased specifically named 8 accused only while in Exh. P.5 he had named all the accused, and because of the fact that the eye-witnesses belonged to one political faction and the accused belonged to the other, the High Court thought it "just and proper to go according to the theory of overt act" and applied the test "that there should be at least the evidence of two direct witnesses regarding specific overt acts of the accused", and on that basis confirmed the conviction of A-4 and A-6 only. It acquitted all other accused for the offences punishable under Sections 147, 148, 452 and 302 read with 149 IPC. It confirmed the conviction of A-8 and A-10 u/s 324 IPC for causing hurt to Saraswati PW. 1 but reduced the sentence to that already undergone. Aggrieved by this judgment and order the accused and the State have filed these appeals as stated above.

5. Having considered the rival submissions and scrutinised the evidence of PWs. 1, 2, 3 and 5 we find that the courts below were right in accepting them as eyewitnesses and treating their evidence as reliable and trustworthy. Though the eyewitnesses were closely related to the deceased there is no material on record to show that they had any personal enmity with any of the accused. It was only out of abundant caution that the trial court did not convict A-5, A-11, A-12 and A-14 on the basis of their evidence as no specific overt acts were attributed to them by any of them. The High Court also, again by way of abundant caution, thought it fit to confirm the conviction of only those accused who were involved by more than two eye-witnesses. As PWs. 1, 2, 3 and 5 had attributed overt acts to accused A-4 and A-6, so far as the assault on the deceased was concerned their conviction was confirmed. As their evidence was consistent with respect to

the assault on PW. 1 by A-8 and A-10 their conviction u/s 324 was also confirmed. What the High Court failed to appreciate and consider was that all those who trespassed into the house of the deceased, dragged him out and assaulted him and his wife were members of the unlawful assembly and what they did was in prosecution of their common object. The evidence of PW. 3 Venkatalaxmi and PW. 5 Aluri Raja clearly establishes that a mob of persons armed with weapons was seen rushing towards the hut of the deceased. Their evidence and that of PWs. 1 and 2 further establishes that on seeing them coming in this manner Venkatalaxmi and Vijaya cried out loudly and, therefore, the deceased and PW. 1 closed the door of their hut and bolted it from inside. The evidence of all these witnesses further establishes that A-1, A-2, A-4, A-6 and A-8 broke open the door of the hut and went inside. Evidence of PW. 1 and her brother PW. 2 clearly discloses the object with which the accused had come there. They have stated that immediately after entering into the hut these accused stated to the deceased that their man was beaten. They had then dragged him out of his hut in spite of the requests made by the two witnesses to leave him. Both of them were pushed away by those accused. The evidence of the eyewitnesses further establishes that as soon as the deceased was taken outside they and other accused had started assaulting him with spears, axes and sticks. That part of their evidence stands corroborated by the medical evidence also. From the evidence of the witnesses, though it is not wholly consistent, it appears that A-1, A-4, A-6 and A-7 had axes with them, A-2, A-3, A-5, A-8, A-9 and A-10 had spears, and others had carried sticks. Thus the matter in which they came and acted after reaching the hut of the deceased leaves no doubt that all those who had assaulted the deceased and PW. 1 Saraswati were the members of the unlawful assembly and that the death of the deceased was caused in prosecution of their common object. It may be stated that all the witnesses have consistently referred to the presence of and participation by accused Nos. 1 to 4, 6 to 10 and 13.

6. The High Court committed an error in not viewing the incident as a whole and failed to appreciate that the acts of breaking open the door of the deceased, dragging him outside and beating him were committed in prosecution of their common object, and beating of P.W. 1 was also an act which members of the unlawful assembly can be said to have known as likely to be committed in prosecution of their common object. Therefore, on the basis of the test applied by the High Court itself the High Court ought to have convicted A-1, A-2, A-8 and A-10 also. The High Court wrongly acquitted them by overlooking the applicability and effect of Section 149 IPC.

7. Another reason given by the High Court for insisting upon the test of specific involvement by more than two witnesses was that the deceased in his second dying declaration had made an improvement over his first dying declaration. In his first dying declaration which was originally taken as FIR, the deceased named A-1 to A-6, A-8 and A-9 specifically and further stated that there were 5 or 6 other persons of the village. It is significant to note that in this dying declaration

also the deceased had stated that the accused were armed with axes, spears and sticks and that he was beaten by all the three types of weapons and one of the accused had thrown a big stone on his legs. He had also referred to the presence of his wife and his brother-in-law PWs. 1 and 2 inside his hut and their request not to beat him. The eye-witnesses have consistently stated that it was A-13 who had thrown the stone on the legs of the deceased. In the second dying declaration Exh. P.5 which was recorded by the Munsif-Magistrate at about 10 a.m., half an hour after his statement was recorded by the Police, he specifically named A-1 to A-13 as the persons who had beaten him. He referred to A-1 to A-5, A-7 to A-10, A-13 and A-14 as the persons who had given blows with the axes and spears. When he was asked by the Magistrate as to whether he had anything further to say, he stated that A-6 had caused a cut injury and that A-11 and A-12 had also beaten him. This dying declaration has been treated by the High Court as an improvement over the earlier statement made by the deceased. It may be stated that the trial court specifically recorded a finding, rejecting the defence contention that the two dying declarations were tutored. Another thing to be noted is that soon after the assault on him the deceased had become unconscious and that he regained consciousness at about 9.30 a.m. in the hospital after he was given medical treatment. As soon as he regained consciousness, his statement came to be recorded by the Sub-Inspector who was already in the hospital by that time. There is nothing on record to show that in between the recording of the statement of the deceased by the Police and the dying declaration by the Magistrate any one was allowed to go near the deceased. The evidence of the Magistrate and the doctor rules out the presence of any one else at the time of recording of the second dying declaration Exh. P.5. In our opinion, further details given by the deceased could not have been treated as an improvement. The High Court has, therefore, committed a grave error in applying the test of involvement by two witnesses on this ground. It is also significant to note that presence of the other accused who were not named in the FIR was independently disclosed by the eye-witnesses also. On close scrutiny of the two dying declarations we find that there was no attempt on part of the deceased to make any improvement in the second dying declaration and thereby try to involve some more persons as the assailants.

8. The evidence of the eye-witnesses and the two dying declarations clearly establish that A-1 to A-4, A-6 to A-10 and A-13 and even the accused acquitted by the trial court were members of the unlawful assembly, the common object of which was to cause death of Veerabhadram. Therefore, whether all of them had beaten the deceased or not was really not of any consequence and all should have been held guilty of causing death of Veerabhadram. There being no appeal against the acquittal of A-5, A-11, A-12 and A-14, the question of disturbing their acquittal does not arise.

9. We, therefore, allow the State appeal, set aside the judgment and order of acquittal passed by the High Court so far as A-1 to A-3, A-7 to A-10 and A-13 are concerned and confirm the order of conviction and sentence passed against them

by the Sessions Court. Conviction and sentence of A-4 and A-6 are confirmed. Accordingly the appeals filed by accused being Criminal Appeal Nos. 411 and 412 of 1991 are dismissed and Criminal Appeal No. 413 of 1991 filed by the State is allowed.