

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2439 OF 2010

GANJI ESHWAR ... Appellant

VERSUS

STATE OF ANDHRA PRADESH ... Respondent

O R D E R

The appellant herein is convicted for having committed murder of one Bakkappa, who was his step brother (hereinafter referred to as the 'deceased'). On this basis, conviction is recorded under Section 302 of the Indian Penal Code (IPC) which has been affirmed by the High Court also.

The case of the prosecution is that on 20.07.2008 at 12:00 noon, the complainant viz., Habbel Hanmanthappa, resident of Dhanasiri(v) came to the Police Station, Cherlapalli and lodged a complaint mentioning that on 20.07.1998 at about 9:15 a.m. the deceased's daughter Sukalatha(PW-10) and his mother Veeramma came to his office. Sukulatha had stated to him that on that day at about 09:00 a.m., her deceased father was sitting at the bus stand in order to go to Zaheerabad. In the meantime, Eshwar, Vittal and Gundappa, all residents of Dhanasiri(v), came there. Eshwar was having axe, Vaiyappa, Basani, Dayanand were having sticks, Bandappa, Vittal and Gundappa were having Kammakathies (sickle). Eshwar beat her father with axe, upon

which the deceased fell down on the ground. In the meantime, all the remaining accused beat him with sticks, Kammakathies and caused his death. Thereafter, accused Eshwar caught hold the hands of the deceased and the other accused dragged the dead body towards Bheemalkhed(v) road. On the above information, the complainant and village servants Anjanna, Thukkanna, Babu Miyuan proceeded to Ambedkar statue and found a pool of blood at the scene and also found dragging marks on the ground and as per the dragging marks the complainant and village servants proceeded towards Bheemalkhed road and found deceased's dead body was in flames at Eshwar's agricultural fields and also found two kerosene tins at the scene of offence. Thus, he requested for taking necessary action.

On the receipt of the above complaint, G. Madhusudhan Reddy, H.C.235 registered a case under Sections 147, 148, 302 and 201 read with Section 149 of the IPC and took up the investigation.

As many as eight persons were arrayed as accused, including the appellant herein. The Trial Court had convicted all the accused persons. However, the High Court had acquitted others and maintained the conviction only of the appellant herein.

Insofar as the appellant is concerned, the conviction is based on the statement of the daughter of the deceased Sukulatha(PW-10) who was the eye-witness to the incident.

Her statement has been believed by both the Courts as worthy of credence noticing that even after detailed and extensive cross-examination nothing could be brought out which could shake her testimony. She was 10 years old at the time when the incident had taken place and the Court found that qua the appellant, her narration of the incident was trustworthy.

The only argument which is raised by the learned counsel for the appellant is that PW-10 had even named two more persons viz., Accused-6 and Accused-8 for their overt acts by stating that Accused-6 had attacked the deceased with Kammakatti on the right shoulder and Accused-8 attacked the deceased with an axe on the left shoulder. It was argued that in spite thereof, when the said two accused persons are acquitted, it would go on to show that the testimony of PW-10 was not believed by the High Court and, therefore, benefit should have been extended to the appellant as well.

This argument appears to be contradictory when it is examined in the light of the discussion that has taken place in the impugned judgment. While acquitting Accused-6 and Accused-8, hollowness of this argument stands established. The High Court has noted that the offence took place around 9 a.m. and the FIR was registered at 12:00 noon. However, this FIR had reached the Court at 2:00 p.m. and, therefore, there was some delay in reaching the FIR to the Court. On that basis, the High Court commented that averments in the FIR

could not be taken as totally true, particularly about the participation of all the accused persons in the case. The High Court, thereafter, went onto the issue of motive insofar as other accused persons are concerned and found that there was absolutely no material to show any reason for other accused persons to participate in the offence as they had no motive at all. They were neither the henchmen of Accused-1 nor the relatives, nor had any enmity with the deceased even as per the prosecution case.

It appears that mainly influenced by these considerations, Accused-6 and Accused-8, along with other accused persons, were given benefit of doubt and were acquitted. We do not comment whether this was the right approach. However, insofar as the appellant is concerned, strong motive to commit the offence has been proved. It so happened that real brother of the appellant was murdered about a year before the incident in question and it is the deceased who was charged with the said offence. The deceased was, in fact, arrested as well. He had been released on bail hardly a couple of months before the incident. In such circumstances and having regard to the testimony of PW-10 who is the eye-witness who had seen the occurrence, insofar as the appellant is concerned, he is rightly convicted by the Courts below.

We, thus, find that the appeal is devoid of any merits

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and is, accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[S.A. BOBDE]

....., J.
[ASHOK BHUSHAN]

New Delhi;
September 01, 2016.

ITEM NO.108

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 2439/2010

GANJI ESHWAR

Appellant(s)

VERSUS

STATE OF ANDHRA PRADESH

Respondent(s)

Date : 01/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. Anil Shrivastav, Adv.

For Respondent(s)

Ms. Bina Madhavan, Adv.
Mr. Baskula Athik, Adv.
Mr. Guntur Prabhakar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master

[Signed order is placed on the file.]