

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 554 OF 2008

Myalaram Pochaiah & othersAppellants

Versus

State of A.P.Respondent

O R D E R

The present appeal is directed against the judgment of conviction and order of sentence passed in Criminal Appeal No. 712 of 2005 by the High Court of Judicature of Andhra Pradesh at Hyderabad wherein the Division Bench of the High Court affirmed the conviction and sentence passed by the learned Special Judge in SC/ST. SC No. 25 of 2001 in respect of accused-appellant Nos. A-1 to A-3, A-5 to A-7 and A-10 to A-14 whereby he had convicted all the accused persons under Section 148 and Section 302 read with Section 149 of the Indian Penal Code (for short 'the IPC') and some others exclusively under Section 302 of IPC and, accordingly, had sentenced them for life imprisonment and to pay a fine of Rs.200/- each, in default of payment of fine, to suffer six months' simple imprisonment and also rigorous imprisonment for one year for the offence under Section 148 IPC with the stipulation that all the sentences shall run concurrently, and acquitted A-8, A-9 and A-15 of all the offences. Be it noted, A-4 had expired during the pendency of the appeal before the High Court and hence, the appeal qua him stood abated.

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2. The accused-appellants, eleven in number, along with four others were charge-sheeted for offences punishable under Sections 148, 302 read with Section 149 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity 'the Act'). Briefly stated, the case of the prosecution was that on 24.4.1999, Konda Janardhan and Konda

Ravinder had murdered one Myalaram Mogulaiah for which they are facing trial for offences punishable under Section 302 read with Section 34 of IPC. Because of the said incident, the Mudiraj caste people of Surampally village were having inimical terms with those who belong to Madiga (Harijan) community. On 27.7.2000, at about 4.00 PM, while Konda Mohan and Konda Ravinder were attending work in the field, accused No. 1, namely, Myalaram Pochaiiah, entered into a quarrel with Ravinder in connection with release of water, and also there was an altercation pertaining to the murder of Myalaram Mogulaiah. After the same was pacified to some extent by intervention of others, accused No. 1 went to Surampally village and came armed with lethal weapons like axes, knives and sticks along with other accused persons A-2 to A-15 and waited near a culvert of the village. When Konda Mohan and Konda Ravinder were returning from their fields, the accused persons attacked them with deadly weapons and inflicted number of injuries as a result of which they breathed their last on the spot. As alleged by the prosecution, accused Nos. 3, 4, 6 to 10 attacked Konda Mohan and A-1, A-2, A-4 and A-11 to A-15 chased Ravinder and inflicted injuries on him. At that juncture, an auto driven by PW-9, Aladi Raju, was bringing Konda Sudershan,

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Konda Vardaiah and Konda Janardhan along with some other passengers. The accused persons forcibly pulled them out from the said auto and inflicted severe bleeding injuries on their stomach, throat, neck, etc. as a consequence of which they died spontaneously. An FIR was lodged by Konda Bagaiah which set the criminal law in motion and Crime No. 30 of 2000 under Sections 147, 148, 302 read with Section 149 IPC and Section 3(2)(v) of the Act was registered and after completion of investigation, charge-sheet was filed.

3. The accused persons abjured their guilt and faced the trial.

4. The prosecution to prove its case examined PW-1 to PW-25, exhibited P-1 to P-50 and got MOs-1 to MOs-44 marked.

5. The defence chose not to adduce any evidence, but only brought contradictions to the initial statement recorded under Section 161 of the Code of Criminal Procedure by way of confrontation and the same were marked as Ex. D-1 to D-4.

6. The learned trial Judge, analysing the evidence brought on record, gave credence to the eye witnesses and accepted the prosecution case as far as the formation of unlawful assembly and murder was concerned, but did not accept the case of the prosecution under Section 3(2)(v) of the Act and recorded the conviction and imposed the sentence as stated hereinbefore.

7. Being aggrieved with the aforesaid judgment of conviction and order of sentence, all the accused-appellants preferred appeal before the High Court. It was contended before the High

Court that there are number of omissions and contradictions in

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the evidence of the prosecution witnesses; that accused No. 4 was a physically handicapped person and, hence, there was no possibility on his part to attack the deceased by chasing him; that the names of A-1 to A-5 did not find place in the FIR, Ex. P-1; that the name of A-15 was added after deleting the name of one Gatta Narsimlu; that two sons of Pedda Kistaiah were shown as A-8 and A-9 though they were sons of Chinna Kistaiah; that all the eye witnesses are women and they being related to the deceased persons were interested witnesses and, therefore, no credence should have been given to their version.

8. The High Court adverted to the injuries sustained by all the deceased persons and concurred with the finding of the learned trial Judge that the death was homicidal in nature. It

analysed the ocular and documentary evidence brought on record and came to hold that the involvement of A-8 and A-9 was doubtful inasmuch as their surnames mentioned in the FIR and charge-sheet were totally different and it was a material discrepancy and there had been no explanation therefor and, hence, they were entitled to benefit of doubt. As far as A-15 is concerned, it

was opined by the High Court that his name was added by deleting

the name of Gatta Narsimlu. That apart, the High Court had found in the FIR that A-15 was described as Gatta Narsimlu s/o Ramaiah whereas in the charge-sheet, he was described as Mylaram Illitam Laxmaiah s/o Mallaiah and there was no explanation and, hence, it was difficult to believe that he participated in the commission of offence and accordingly extended the benefit of doubt. Thus, the High Court acquitted three accused-appellants by giving them

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benefit of doubt and affirmed conviction in respect of eleven others. Hence, the present appeal.

9. We have heard the learned counsel for the parties at length and perused the records.

10. On a close scrutiny of the judgments of the trial court as well as that of the High Court, it is quite clear that all the deceased persons sustained number of injuries and death was spontaneous. The learned counsel for the appellants did not dispute, and rightly so, that the death was homicidal in nature.

Another aspect has gone undisputed that there was acrimony between the two groups and the same had genesis in the murder of Mogulaiah, the brother of A-2 and A-3. As the evidence on record

would show, the occurrence took place at two places and with some interval. The first one was at about 4.00 PM when the cavil took place between A-1 and the deceased No. 2, Ravinder, which pertained to irrigation of water and previous murder. PW-2 to

PW-5 have stated about intervention and how they had pacified the matter. As far as this incident is concerned, nothing has been brought on record to disbelieve the same. All the witnesses have

stated in categorical terms that the quarrel commenced relating to distribution of irrigational water and it slowly got converted into a serious altercation. The topography of the field, the situation of the respective land and the dispute relating to the irrigation of water have come vividly in the testimony of witnesses and nothing has been elicited in the cross-examination.

The second part of the incident, as the prosecution case is projected, occurred near the culvert. The prosecution, as is

evincible, has relied on the testimony of some eye witnesses, the confessional statements, seizure of weapons and blood stained clothes. It has been urged by both the sides that enmity is a double edged weapon and, therefore, the evidence of the witnesses, especially the interested witnesses, is required to be scrutinised and appreciated with immense circumspection.

11. It is notable that the trial court and the High Court have given credence to the version of the witnesses and also placed reliance on the recovery memos. Thus, the question would be whether such appreciation by the High Court of the evidence brought on record is justified or the prosecution has really failed to bring home the charges.

12. PW-1, who belongs to Madiga community, is not an eye-witness. PW-2, the wife of PW-1 is a woman from the same village who had gone to the field for plantation and had been cited as an eye-witness. PWs-3 to 5 are other eye witnesses and closely related to all the deceased persons. Barring the evidence of these witnesses, the evidence of PWs-6 to 8 and PW-9 had not been treated as the testimony of eye witnesses.

13. It is urged by the learned counsel for the appellants that the said witnesses are absolutely interested witnesses and they have deliberately roped in the present appellants out of enmity and their evidence is replete with material contradictions and discrepancies and, hence, is not at all trustworthy. It is to be seen whether the evidence of these witnesses is to be accepted on the backdrop of the nature and character of evidence, their alleged interestedness, the corroboration it has received from

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the medical testimony and their acceptable nexus with the seized articles.

14. PW-2 belongs to Madiga community and has deposited as regards the initial quarrel between A-1 and the deceased, Ravinder. She has narrated about the incident that occurred near the culvert. She has named A-1, A-2, A-11, A-13, A-12 and A-14 who chased and killed Ravinder near the culvert. She has deposited

that there was severe assault on the deceased Mohan who died on the spot. Her version further proceeds to the effect that the accused appellants were armed with lethal weapons and when the auto arrived, they dragged the other three persons and brutally assaulted them. She has identified the weapons. She has clearly deposed that the deceased Mohan received injuries on his right side hand, right side neck, beneath left ear and on left thigh; deceased Ravinder received injuries on his head, neck and all over the body; deceased Sudershan received injuries on his head, neck and throat; deceased Vardhaiah received injuries on his head, throat and other parts of the body; and injuries on head and on throat and right side of the stomach were inflicted on Janardhan. In the cross-examination, despite series of questions hauled at her with regard to the topography of the land to create a doubt about the first occurrence as well as the factum of cultivation and thereafter to discredit the version pertaining to assault, nothing has really been elicited to discredit or demolish the testimony. A feeble attempt has been made to create a doubt about the auto rickshaw owner and the presence and the arrival of the appellants but the same has not been able to

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create any dent in her version. In fact, she has stood absolutely embedded.

15. PW-3 is the wife of one of the deceased. She has fully

described the nature of weapons, injuries caused, previous enmity, chasing of the accused persons and the brutality of assault.

PW-4, wife of another deceased, has specifically stated

how the accused persons got hold of D-5, her husband, and murdered him. PW-5, after narrating the first incident, has

stated in clear cut terms about the whole incident. It is

worthwhile to note that despite a lengthy and roving cross-

examination, no material contradiction or discrepancy has been

brought out in the testimony of these witnesses.
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PW-9 has admitted about the number of people who had stopped the

auto and dragged the passengers.

Though he has rightly not been

treated as an eye witness as he ran away from the scene, yet his

evidence lends credence to the fact that three of the deceased

were dragged out from the auto.

16. The High Court in detail has discussed the evidence of PW-

16, the medical officer, who conducted autopsy on the dead body

of D-2, PW-17, the doctor, who conducted post mortem on the dead

body of D-3, PW-18, another medical officer, who
conducted

autopsy over the dead body of D-1 and PW-24, the Civil Assistant

Surgeon, who had certified the signature of Dr. Dinakar, who

conducted the post mortem on the dead bodies of D-4 and D-5.

As

mentioned earlier, the oral testimony has received corroboration

from the medical evidence. It is worth noting
that the

discrepancies which were highlighted with regard to the nature of

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weapons held by some of the accused persons have been rightly

treated to be minor as a group of persons was attacking the

deceased persons.

17. On a careful scrutiny of the oral evidence, we find that

the same is really consistent and corroborative in m
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aspects and there is no reason to discard the evidence of such

natural witnesses. In fact, when they were deposing in court

after so many years, the minor discrepancies are expected to

occur. There is really no material contradiction to create a

dent in their version. Though the learned counsel f
or the

appellants has vehemently submitted that only wives
of the

deceased persons have been examined and no independent
male

witness has been examined and hence, the version o
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prosecution should be discarded, yet the said submission is only to be rejected as the wives had gone to the field for plantation and while they were coming, they witnessed how the deceased persons were attacked and done to death. It is very difficult to perceive why the wives would implicate the accused persons and vividly give them a role. That apart, their evidence gets corroboration from PWs-14 and 15 who have graphically stated about the recovery of weapons and have not yielded to any suggestion.

Thus analysed, we find that the version of the eye witnesses, namely, PWs-2 to 5, deserves acceptance being consistent and devoid of material contradiction and discrepancies. The seizure of weapons have been clearly

established beyond any iota of doubt and the oral evidence as

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regards the character of injuries has got full corroboration from the medical testimony. Thus, the attack on the judgment of the High Court on the ground of acceptance of testimony of interested witnesses is wholly unacceptable and we repel the same.

18. Resultantly, the appeal, being devoid of merit, stands dismissed.

.....J.
[DR. B.S. Chauhan]

.....J.
[Dipak Misra]

New Delhi;
May 16, 2012.

ITEM NO.110

Court No.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 554 OF 2008

MYALARAM POCHAIHAH & ORS.

Appellant (s)

VERSUS

STATE OF A.P.

Respondent(s)

(With office report)

Date: 16/05/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE DIPAK MISRA

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(VACATION BENCH)

For Appellant(s)

Mr. R. Nedumaran, Adv.

For Respondent(s)

Mr. D. Mahesh Babu, Adv.

Mr. Amit K. Wain, Adv.

Ms. Suchitra H., Adv.

Mrs. D. Bharathi Reddy, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal, being devoid of merit, stands dismissed in terms of the signed order.

(DEEPAK MANSUKHANI)

Court Master

(Signed order is placed on the file)

(M.S. NEGI)

Court Master