

STATE OF ANDHRA PRADESH

v.

GOWTHU RANGHUNAYAKULU AND ORS.

NOVEMBER 19, 1986

[A.P. SEN AND B.C. RAY, JJ.]

Criminal Procedure Code, 1973—Section 354—High Court Judgment acquitting all accused—Evidence of prosecution witness who were eye-witnesses to a gruesome murder—Not at all considered and marshalled—Points for decision not formulated—Judgment set aside—Case remanded to High Court.

The ten accused persons forming themselves into an unlawful assembly in the house of A-1 and arming themselves with spears, sticks and crow-bars attacked the deceased while he was returning from the canal carrying water in 'Kavadi'. As a result of the injuries sustained by the deceased he died. All the ten accused were charged under s. 147 I.P.C. accused A-1, A-4, A5 and A-6, who were armed with deadly weapons were also charged under s. 148 I.P.C. and accused A-1 to A-10 were further charged under s. 302 read with s. 149 I.P.C.

The trial Court acquitted A-4, A-9 and A-10 of all the charges levelled against them. Accused A-1 to A-3 and A-5 to A-8 were convicted u/s. 147 I.P.C. and sentenced to undergo rigorous imprisonment for one year. Accused A-1, A-5 and A-6 were convicted u/s. 148 I.P.C. and sentenced to undergo rigorous imprisonment for two years. Accused A-1, A-2, A-5 and A-6 were convicted u/s 302 read with s. 149 I.P.C. and sentenced to death. Accused A-3, A-7 and A-8 were also convicted u/s. 302 read with s. 149 I.P.C. but sentenced to undergo imprisonment for life.

The High Court allowed the appeals filed by the convicted accused and acquitted all of them of the charges levelled against them and rejected the reference.

Allowing the appeal of the State to this Court,

HELD: 1. The judgment passed by the High Court acquitting all the accused is not a proper judgment in accordance with the provisions of s. 354 of the Code of Criminal Procedure 1973. The learned Judge has not at all considered and marshalled the evidence of witnesses examined on behalf of the prosecution particularly the evidence of PWs. 1, 3, 4, 6 and 7 who were eye witnesses to the gruesome murder committed in the morning at about 7.30 a.m.

A The names of all the seven accused appeared in the F.I.R. [330 C]

B 2. The learned Judge approached the case from wrong angle and without properly formulating the points for decisions and without any proper appraisal of the evidences adduced by the prosecution to prove the guilt of the accused persons and also without adverting to the reasoning of the Sessions Judge, has perfunctorily come to the finding that the prosecution has failed to prove beyond doubt the case against the accused even though there are eye-witnesses P.Ws. 1, 3, 4, 6 and 7 to the occurrence. [330 E]

C 3. The judgment of the High Court is set aside and the case is remitted back to the High Court for deciding it in accordance with law on a proper appraisal and marshalling of the evidence on record as early as possible. [330 F-G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 12 of 1978

D From the Judgment and Order dated 19.4.1976 of the Andhra Pradesh High Court in Referred Trial No. 2 of 1976.

K. Ram Kumar for the Appellant.

G. Narasimhulu and S.K. Mehta for the Respondents.

E The Judgment of the Court was delivered by

F **B.C. RAY, J.** This appeal by special leave is against the judgment and order dated 19.4.1976 made by the High Court of Andhra Pradesh in the Referred Trial No. 2 of 1976 and Criminal Appeal Nos. 159, 168 and 169 of 1976 acquitting all the 7 accused who were convicted and sentenced by the Sessions Court, West Godawari Division at Eluru, Andhra Pradesh in Sessions Case No. 71 of 1975.

G The prosecution case in short is that on 23rd July, 1974 at 7.30 a.m. the accused persons forming themselves into an unlawful assembly in the house of the 1st accused and arming themselves with spears, sticks and crow-bars attacked the deceased while he was returning from the canal carrying water in what is locally known as "Kavadi". When the deceased reached the house of the 1st accused, all the ten accused came from behind and the 2nd accused gave a blow with a stick on the back of the head of the deceased as a consequence of which he fell down on his back. Then the 1st accused speared the deceased on his face and legs, the 5th accused poked the deceased on his right wrist with a crow-bar and the 6th accused speared the deceased on his legs and hands. The

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rest of the accused then beat the deceased with sticks indiscriminately. The deceased cried "Bobu". This was heard by his wife (P.W.5) from her house which is situated about 150 yards. She immediately ran to the scene of occurrence and saw accused 1 to 8 and two others entering into the house of the 1st accused. P.W. 5 then sent intimation to her brother P.W. 2 who was working as labourer in a sugar factory through P.W. 8. P.W. 2 and others took the deceased to Bhimadole Police Station in a cart which is about 4 kms. away from their house and lodged the F.I.R., Ex. P-1 wherein all the names of accused Nos. A1 to A4 and A6 to A8 as well as the nature of injuries inflicted on the person of the deceased were mentioned. This FIR was registered at 9.30 a.m. and a case u/s 326 I.P.C. was registered. Subsequently, the deceased was found dead on examination by the Doctor, P.W. 12 at the Government Hospital, Eluru. The F.I.R. was then altered to one u/s 302 I.P.C. The Inspector of Police made inquest of the dead body and the inquest report has been marked as Ex. P5. All the 10 accused were charged u/s 147 I.P.C. The accused A1, A4, A5 and A6 who were armed with deadly weapons were also charged u/s 148 I.P.C. and accused A1 to A10 were charged u/s 302 read with section 149 I.P.C. They were all committed to the Court of Sessions.

The Sessions Judge after considering the entire evidence and also hearing the counsel for the prosecution as well as the defence found that accused A1 to A3 and A5 to A8 were guilty of the offence u/s 147 I.P.C. and also u/s 302 read with section 149 I.P.C. A1, A5 and A6 were also held guilty u/s 148 I.P.C. The accused A4, A9 and A10 were however acquitted of the offence u/s 147 I.P.C. Accused A4 was also not found guilty of offence u/s 148 I.P.C. The accused A1, A5 and A6 who were convicted u/s 302 read with section 149 I.P.C. were sentenced to death and they were directed to be hanged by their necks till their death subject to confirmation by the High Court. A3, A7 and A8 were convicted u/s 302 read with section 149 I.P.C. and they were sentenced to undergo imprisonment for life. A2 was also convicted u/s 302 read with section 149 I.P.C. and he was sentenced to death and directed to be hanged by his neck till death subject to confirmation by the High Court. The accused A1 to A3 and A5 to A8 who were convicted u/s 147 I.P.C. were sentenced to undergo rigorous imprisonment for one year. A1, A5 and A6 were convicted u/s 148 I.P.C. and they were sentenced to rigorous imprisonment for two years. All the above sentences were to run concurrently.

Against this judgment and order 3 criminal appeals being Criminal Appeal Nos. 159/1976, 168/1976 and 169/1976 were filed. These criminal appeals along with R.T. No. 2 of 1976 were heard by the High Court of Andhra Pradesh, Hyderabad and the learned Judge by his order dated 5th May, 1976 acquitted all the accused of both the charges of rioting and murder levelled

A against them and set aside the convictions and sentences allowing all the appeals and rejecting the reference.

It is against this judgment and order the instant appeal on special leave was filed before this court by the State. This court granted special leave to appeal by its order dated 11.1.1978 and also ordered issue of bailable warrants against each of the accused persons in the sum of Rs. 10,000 with one surety to the satisfaction of Additional Sessions Judge, Eluru.

We have heard the learned counsel for both the parties and we are constrained to hold that the judgment passed by the High Court acquitting all the accused is not a proper judgment in accordance with the provisions of Section 354 of the Code of Criminal Procedure 1973. The learned Judge has not at all considered and marshalled the evidences examined on behalf of the prosecution particularly the evidences of PWs 1, 3, 4, 6 and 7 who were eye witnesses to the gruesome murder committed in the morning at about 7.30 a.m. The names of all the 7 accused appeared in the F.I.R. lodged by PW-2 in the Police Station at 9.30 a.m., Ex. P1 and Ex. P.23 and P.24 dated 23.7.1974. The learned Judge did not formulate properly the points for decision and did not marshal the evidences on record and did not come to specific finding on each of the points for determination by recording specific reasons for arriving at the decision. It is really unfortunate that the learned Judge approached the case from wrong angle and without properly formulating the points for decision and without any proper appraisal of the evidences adduced by the prosecution to prove the guilt of the accused persons and also without adverting to the reasonings of the Sessions Judge, has perfunctorily come to the finding that the prosecution has failed to prove beyond doubt the case against the accused even though there are eye-witnesses P.Ws. 1, 3, 4, 6 and 7 to the occurrence.

In our considered opinion, this judgment is not in accordance with the mandatory requirements as laid down in Section 354 of the Code of Criminal Procedure. We therefore, set aside the judgment and order of acquittal passed by the High Court of Andhra Pradesh and remit the case back to the High Court, Andhra Pradesh for deciding the case in accordance with law on a proper appraisal and marshalling of the evidences on record as early as possible. The order of interim stay is vacated and bail bonds are cancelled. The records be sent to the High Court forthwith. The High Court will be free to consider whether the accused will be enlarged on bail.

A.P.J.

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