

KOTHAKALAVA NAGA SUBBA REDDI AND ORS.

v.

THE PUBLIC PROSECUTOR HIGH COURT OF ANDHRA PRADESH

MARCH 28, 2000

[K.T. THOMAS AND M.B. SHAH, JJ.]

Indian Penal Code, 1860 :

Ss.148 and 302/149—Murder—Attack on victim by 6 persons armed with deadly weapons—Death of victim—Trial Court not believing the evidence of eyewitnesses—Ordered acquittal of all accused—High Court re-appreciating the evidence and convicting 4 of the accused and sentencing them to imprisonment for life—Held, High Court fully justified in reversing acquittal order passed by Sessions Judge whose approach in appreciating evidence of material witnesses was absolutely unreasonable and unjustified—Code of Criminal Procedure, 1973—Appeal before High Court against acquittal.

The four accused-appellants alongwith two others were prosecuted for committing murder of the husband of PW 2. The prosecution case was that in the evening of 26.9.1990 the deceased alongwith PW 1 and PW 2 was returning from town. He was walking about 5 yards ahead of the two witnesses. At about 10.30 P.M. when all the three reached outskirts of the village of the deceased, accused No. 1 armed with a spear, accused Nos. 2 and 3 armed with sickles, accused Nos. 4 and 5 armed with daggers and accused No. 6 armed with a metallic stick, attacked the deceased with their respective weapons. When the two witnesses tried to intervene, the accused tried to attack them also and chased them. The witnesses ran away and reached the house of the victim and informed his wife and children about the assault on him. All of them reached the spot and found the victim dead having multiple bleeding injuries. It was the case of the prosecution that accused No. 1 was dealer of a Fair Price Shop. He committed irregularities in distribution of essential commodities. The villagers including the deceased lodged a complaint against him whereupon his dealership was suspended and PW 5 was temporarily given the dealership of the Fair Price Shop. On account of this Accused No. 1 bore a grudge against the deceased and had threatened to kill him. The trial court acquitted all the accused. But the High Court reversed the acquittal, and convicted accused Nos. 1 to 3 and accused No. 5. Since out of the two eye-witnesses PW 10

A could not identify accused Nos. 4 and 6 as amongst the assailants, the High Court gave them benefit of doubt. Aggrieved, the convicted accused filed the present appeal.

B It was contended for the appellants that the High Court materially erred in interfering with the order of acquittal and it should not have relied upon the evidence of PWs 1 and 10. It was submitted that PW 1 was a resident of a village which was about 70 Kms away from the village of the victim, and PW 10 was treated by the trial court as a hostile witness. It was also submitted that there was no sufficient light to identify the assailants.

C Dismissing the appeal, the Court

HELD : 1.1. The High Court was fully justified in reversing the acquittal order passed by the Sessions Judge whose approach in appreciating the evidence of the material witnesses was absolutely unreasonable and unjustified. [593-D-E]

D 1.2. PW 1 is the brother of the wife of the deceased. His going to and residing at the house of the deceased is corroborated by PWs 2 and 3, the wife and daughter of the deceased. He had gone to the residence of the deceased prior to the date of occurrence in order to help him in the harvest of sericulture. That he accompanied the deceased and PW 10 to the town and returned with them, on the day of occurrence has been established by the evidence of PWs. 5, 6, 7, 8 and 10. PW 8 is a bus conductor. He has deposed that PWs. 1, 5 and 10 and the deceased boarded his bus while they were returning from the town on the date of occurrence and the following day PW 1 boarded his bus at 5.30 A.M. for going to police station, and during their talk PW 1 informed him about the murder of the deceased. He is an independent person not connected with either the accused or the witnesses and there is no reason to doubt his evidence. It cannot, therefore, be said that PW 1 was not at all present at the time of occurrence. [592-B-D; 593-B-D]

G 1.3. As regards PW 10, the trial court materially erred in treating this witness as a hostile witness only on the ground that the Public Prosecution after obtaining the permission had asked a question with regard to the role played by accused Nos. 4 and 6 on the basis of his police statement. There was no reason for the Sessions Judge to treat this witness as not supporting the prosecution case. On the contrary, this would mean H that the witness was truthful and he has not supported his police version

with regard to the identification of accused Nos. 4 and 6. From this also, he cannot be dubbed as a liar to whom no credence can be given as held by the Sessions Judge. The approach of the Sessions Judge in treating this witness as a hostile witness and terming him as a liar is, wholly unjustified and unreasonable. [592-F-H; 593-A]

1.4. For the assault on the deceased by the accused, PW 1 narrates the incident involving accused Nos. 1 to 6. However, PW 10 has deposed that he had noticed six persons out of whom he could identify only accused Nos. 1 to 3 and 5. Considering this aspect, accused Nos. 4 and 6 were given benefit of doubt by the High Court. With regard to the weapons used, both the witnesses have specifically stated that A-1 was armed with spear, A2 and A3 were armed with hunting sickles and A5 was armed with dagger and they assaulted the deceased with their respective weapons. Both the witnesses state that they identified the assailants in the light of a three-cell torch. The evidence of these witnesses with regard to assault gets corroboration from the FIR which was lodged at 7.30 a.m. on 27.9.1990 and the injuries received by the deceased as per medical evidence. PW 5 has clearly stated that on 25.9.1990 A-1 had threatened that before distribution of rice the head of deceased would be removed. High Court was thus justified in reversing the order of acquittal passed by the Sessions Judge.

[588-A-C; 593-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 478 of 1998.

From the Judgment and Order dated 2.3.98 of the Andhra Pradesh High Court in CrI.A. No. 920 of 1996.

P.P. Rao, K. Maruthi Rao, Mrs. K. Radha and Mrs. D. Bharathi Reddy for the Appellant.

Ms. T. Anamica and Guntur Prabhakar for the Respondent

The Judgment of the Court was delivered by

SHAH, J. By the judgment and order dated 2.3.1998 the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No.920 of 1996 convicted the appellants and reversed the acquittal order passed by the IInd Additional Sessions Judge in Sessions Case No. 13 of 1992. Before the trial court, there were six accused in all. The High Court convicted A-1, A-2, A-3 and A-5 for the offences punishable under Sections 148 and 302 read with

A Section 149 IPC and sentenced them to undergo R.I. for life and also to pay a fine of Rs.1,000 each in default of payment of fine, simple imprisonment for six months. A-4 and A-6 were acquitted. That conviction order is challenged in this appeal.

B It is the prosecution version that on 26.9.1990 at around 10.30 p.m. on the outskirts of Gangireddipalli near coconut garden, accused committed the murder of deceased Rachapalle Devachandra Reddy. The alleged motive is that accused No.1 resident of Moramkindapalli hamlet of Guriginjakunta village was dealer of Fair Price shop of that village. He was committing certain irregularities while distributing essential commodities. The villagers including C the deceased lodged a complaint against A-1 to the R.D.O., Cuddapah. On the basis of the said complaint, the R.D.O. suspended the dealership of A-1 and in his place appointed P.W.5 Sadhu Ananda Reddi of Yerrakalvapalli as a temporary dealer of the Fair Price shop of that village. As a result of suspension of his dealership, A-1 bore grudge against the deceased. Abbavaram D Ramachandra Reddi P.W.1 is the brother of the wife of the deceased. It is the say of P.W.1 that he went to the residence of the deceased on his request to help him in his harvesting activity of Sericulture crop prior to the date of the incident; on 26.9.1990 at 8.00 a.m. he along with deceased and P.W.10 E boarded the RTC bus at Mallapalli village to go to Rayachoti. After getting down at Rayachoti bus stand at 9.00 a.m., they met one Sadhu Anna Reddi (PW5). All of them took coffee at the bus stand. Thereafter, P.Ws 5 and 10 went to M.R.O's office, Sambepalli to lift rice and sugar as P.W.5 was given F dealership in Fair Price shop at village Guriginjakunta. P.W.1 and the deceased went to the office of Sericulture at about 10.30 a.m. from where they were directed to come back at 1.30 p.m. Hence after taking meals they went back to that Office at 1.30 p.m. They remained in the Office till 3.00 p.m. Thereafter they came back to the bus stand, waited for Sadhu Anna Reddy and Settipalli Venkataramanareddi (P.W.s 5 and 10) who came there at about 4.00 p.m. All of them went to godown at about 5.00 p.m. They returned at the bus stand at 6 p.m. From there they again went to the Revenue Inspector's house [Pradeep G Kumar P.W.12] and remained with him till 8.00 p.m. Thereafter, they went to the house of Bhaskar Reddi (P.W.7) who was working as a Head Clerk in the Revenue Inspector's office at Sambepalli. From that place, all of them returned to the bus stand at 9.30 p.m. They boarded bus in order to go to village Gangireddigaripalli. Bus tickets were purchased by P.W.5 for all of them. P.W.5 got down at village Kathivaripalli after handing over the bus tickets to H P.W.10. All the three got down at village Malapalli at 10.15 p.m. For going

to village Gangireddigaripalli, they proceeded on the cart track. It is the say of P.W. 1 that he was having a torch bearing 3 cells and the deceased was proceeding 5 yards ahead of both of them. When the deceased was going in his garden, they heard the sound and on inquiry by the deceased, they found accused Nos. 1 to 6 with deadly weapons. This was noticed after focussing torch light on them. It is the say of P.W. 1 that accused No. 1 was armed with spear, A2 and 3 were having hunting sickles, A4 and 5 were armed with daggers and A6 was armed with a metallic stick. Thereafter, the accused surrounded the deceased and started assaulting him with their respective weapons. On receipt of injuries, the deceased fell down. When they tried to intervene and asked as to why they were attacking the deceased, accused tried to attack the witnesses and chased them, but they ran away. After reaching the house of the deceased they informed about the incident to the wife and the children of the deceased. All of them went at the spot and found the deceased dead having multiple bleeding injuries.

It is the say of the eye-witnesses that at night time as there was no transport facility available to go to the police station which is at a distance of 16 kms. from the place of incident, P.W. 1 boarded the RTC bus in the early morning at 5.30 a.m., reached the police station and lodged the FIR at 7.30 a.m. At about 8.00 a.m., the Circle Inspector came to the police station and visited the scene of offence at about 9.30 a.m. At the scene of offence, the statements of witnesses were recorded. The I.O. held inquest on the dead body at about 11.30 a.m. He also seized blood stained clothes of the deceased and other articles like torch light.

After appreciating the evidence, the learned Sessions Judge acquitted the accused. As against this, the High Court reversed the said acquittal and convicted four accused as stated above. The question for consideration in this appeal is whether the High Court was justified in reversing the acquittal order passed by the learned Sessions Judge. It has been contended that the High Court ought not to have relied upon the evidence of P.Ws 1 and 10. As per the prosecution version, P.Ws 1 and 10 are eye-witnesses to the occurrence. If their evidence is relied upon, then it can be stated that the Sessions Court materially erred in acquitting the accused who were known to the witnesses and were identified by them at the scene of offence by focussing torch light. Therefore, we have to find out whether the High Court was justified in relying upon the evidence of P.Ws 1 and 10.

As stated, for the assault on the deceased by the accused, P.W.1

A narrates the incident involving accused Nos. 1 to 6. However, P.W. 10 has
deposed that he had noticed six persons out of whom he could identify only
accused Nos. 1 to 3 and 5. Considering this aspect, accused Nos 4 and 6 were
given benefit of doubt by the High Court. With regard to the weapons used,
both the witnesses have specifically stated that A-1 was armed with spear,
A2 and A3 were armed with hunting sickles and A5 was armed with dagger
and they assaulted the deceased with their respective weapons. The evidence
of these witnesses with regard to the assault gets corroboration from the FIR
which was lodged at 7.30 a.m. on 27.9.1990 and injuries received by the
deceased as per medical evidence. It is to be stated that the inquest was held
at the scene of offence at about 11.30 a.m. P.W. 9. Dr. Abdul Khuddus who
conducted the postmortem examination on 27th itself, in all found 18 injuries
on the deceased-8 incised wounds, 5 stab injuries and 2 abrasions. Further
the evidence of P.Ws. 1 and 10 that they had gone along with the deceased
to village Rayachoti and came back to village Malapalli at about
10.15 p.m. on the day of incident is also corroborated by the evidence of
other witnesses.

D
For this purpose, we would first refer to the evidence of P.W.5 Sadhu
Anna Reddi who was given license as a dealer of a Fair Price Shop at
village Guriginjakunta after suspending the license of accused No.1. It is
his say that on the complaint by him as well as the deceased, the RDO
had suspended the Fair Price Shop's dealership of A1 and had given a
temporary dealership of that shop in that area to him. It is his further say
that on 25.9.1990 he went to RDO's office and had deposited Rs.11,000
in the office of MRO. Thereafter he went to the house of the deceased
where P.W. 1 was also there. On 26.9.1990, he went to Rayachoti by
morning bus. Thereafter P.W.1, Venkataramana Reddi P.W.10 and the
deceased also came there by 9.00 a.m. At about 4.30 p.m., he along with
P.W.1, deceased and P.W.10 went to the godown at Rayachoti and lifted the
rice in tractor. Thereafter all of them went to the house of Revenue
Inspector, Sambepalli and inquired about the manner of maintenance of
records. From there they went to the house of Bhaskar Reddi, a Clerk of
MRO and after talking with him, they came back to Rayachoti bus stand
at 9.00 p.m. It is his say that he had purchased bus tickets for all of them.
He got down at his village after handing over the tickets to PW10.
Thereafter he learnt that Devachandra Reddy was murdered. So he went at
the spot at about 11.00 p.m. He has clarified that his village is at about
4 furlongs from the village of the deceased. This witness has also stated
that on 25.9.1990, accused No. 1 threatened that before distribution of rice,

the head of the deceased would be removed. On this aspect, in the cross examination he has stated that A1 had given the said threat three days back and he has not advised the deceased to report the matter to the police. He has also denied the suggestion in the cross-examination that no such threat was given.

The next witness is P.W.6 M. Nagaiah who was working as MRO (Mandal Revenue Officer), Sambepalli. According to him he knew A1 and A2 as well as P.Ws 1, 5 and 10. He has stated that A1 was having Fair Price Shop for about 10 years. On instructions of the Joint Collector, Cuddapah, he conducted inquiry about the activities of A1 in respect of his Fair Price shop and had sent a report to the said authority in the month of June 1990. On the basis of the said report, dealership of Fair Price shop of A1 was suspended and temporary licence was given to P.W.5. He has corroborated the prosecution version that on the date of incident P.Ws.5 and 10 came to his office with demand draft for the purchase of rice and sugar for the said shop and left the office in the afternoon on the same day. He had also issued release orders of the quota. This aspect is further corroborated by P.W. 7, Bhaskar Reddi who was working as a Head Clerk in the Revenue Inspector's Office at Sambepalli at whose house the witnesses along with the deceased had gone on 26.9.1990 at about 7.00 p.m. and also by P.W.12 Pradeep Kumar who was working as Mandal Revenue Inspector who saw them together at the godown where P.W.5 came for lifting rice for food grain shop in a tractor.

Another independent person who corroborates the say of P.Ws.1 and 10, is P.W.8 G. Ramachandra who is not at all connected with the deceased or the witnesses. P.W.8 was a RTC bus conductor at Rayachoti depot. It is his say that at about 9.30 p.m. on 26.9.1990, the last trip of the bus started from Rayachoti for going to Kotagadapalli. It is his further say that he was knowing P.W1, PW 5, PW 10 and the deceased who boarded the bus in the last trip. PW5 purchased the tickets for him and the other three persons. PW 5 got down from the said bus at earlier bus stop and at the next stop, PW 1, deceased and PW 10 got down at about 10.15 p.m. It is his say that thereafter bus went ahead at its destination. On the next day morning, the bus started at about 5.00 a.m. for going to Rayachoti. On the way, PW 1 Ramachandra Reddi got into the bus at Malapalli and got down at Motakatla village. P.W.1 informed him that Devachandra Reddi was murdered. He has denied the suggestion that at the instance and threat by the police, he was deposing falsely and mentioning the names of the prosecution witnesses and other particulars. In his cross-examination nothing material is elicited for not believing his say. In our view, P.W. 8 a bus conductor, is absolutely independent witness neither connected with the accused nor with the

A witnesses. He was knowing the deceased as well as the other witnesses as
deposed by him. He corroborates the main witness, P.W.1 on the aspect that
he boarded the bus at 5.30 a.m. on 27th September for going to the police
station for lodging the FIR. He was also informed by the witness about the
murder of the deceased. His evidence further reveals that deceased along
with three other witnesses boarded the said bus from Rayachoti for returning
to their village and that PWs 1, 10 and the deceased were together and they
got down from the bus at the same time. This establishes the presence of the
witnesses till 10.15 p.m. on 26th September and the incident had occurred
at about 10.30 p.m. Admittedly, P.W.1 is resident of a different village which
is at a distance of 64 to 70 kms. In this set of circumstances, it is difficult
to accept the contention of the learned counsel for the accused that P.W. 1
came subsequently at the scene of offence or was called for by the widow
of the deceased after the murder. It is also to be stated that R. Ammanamma,
widow of the deceased (P.W.2) has also corroborated the version of P.W. 1
and P.W.10. She has also stated that P.W. 1 had come to their house with
regard to their sericulture cultivation. On the date of incident, deceased along
with P.W. 1 and P.W. 10 had gone to Rayachoti and at about 10.15 p.m. she
was informed by the witnesses that accused were assaulting the deceased.
She along with the witnesses and her daughter went at the spot and found
the dead body of her husband lying in a bleeding condition. She has denied
the suggestion in the cross-examination that she was not informed by P.W.
1 and P.W. 10 with regard to the death of her husband. P.W. 3, R. Sridevi,
the daughter of the deceased also supports the prosecution version on this
aspect.

Learned senior counsel made a forceful attempt on the strength of total
absence of any injury on the person of P.W.-1, to contend that if the accused
were the real assailants it was extremely improbable that the assailants would
have spared PW-1 altogether from the attack. To bolster up the said
contention learned senior counsel invited our attention to a further fact that
PW-1 was also one of the signatories to the petition filed against the first
accused for revoking the dealership conferred on first accused as an
Authorised Ration Dealer. Counsel also pointed out that PW-1 did not make
even a little cry when his brother-in-law (deceased) was brutally attacked by
a gang of armed assailants.

As against those arguments Ms. T. Anamika, who argued for the
respondent State, contended that the role of PW-1 in the memorandum
presented against the dealership of first accused was very minimal and that

too he was only one among the very many signatories therein, and that it is not necessary that the assailants should have taken any particular notice of the insignificant role of PW-1. Ms. T. Anamika further contended that the venue of the attack being within the vicinity of the house of the deceased, indicates that the assailants were prowling for the deceased and not anyone else. According to the counsel it is quite possible that first accused would have brought his co-assailants to the scene for launching the attack on the deceased and not anybody else, particularly since nobody would have expected PW-1 to be present at that venue. Ms. Anamika also pointed out that the widow of the deceased testified to the fact that soon after the occurrence it was PW-1 who rushed to her house and reported to her about the incident. Learned counsel contended that if the evidence of PW-1 can be believed it would be the best assurance that PW-1 was at the scene then.

We find considerable force in the above contention. The features highlighted by Ms. Anamika are quite sufficient to override the contentions made against the probability of PW-1 being a witness to the occurrence.

Even regarding the fact that PW-1 did not make a hue and cry at the scene, it cannot be counted against the credibility of his testimony, for, he would have been dump-founded at the sight of the ghastly attack made on his brother-in-law. That apart, he would have instinctively avoided going forward at that stage.

Shri P.P. Rao, learned senior counsel then made a strong argument based on want of sufficient light for PW-1 and PW-10, to identify the assailants correctly. We cannot overlook a broad fact that the light available then was sufficient for the assailants to correctly identify the victim. If that be so, the same light which was available would be sufficient for a watching and curiously looking witness to identify the assailants in the crime.

Mr. P.P. Rao, learned Senior Counsel arguing for the appellants further submitted that no reliance can be placed on the evidence of P.W.1 because there was no necessity for him to accompany the deceased at night time, as he was resident of a village which was approximately 70 kms. away. The prosecution even though examined three officers from revenue department to establish the presence of the witnesses at Rayachoti, has failed to examine any officer from Sericulture Department where the deceased had gone for taking proper advice; that the prosecution has not explained as to why P.W. 5 purchased the tickets for all; that P.W. 10 did not state before the police

A that P.W. 5 had purchased tickets for all that the Investigating Officer did not make any entry about the tickets being thrown away; that the prosecution has failed to prove as to why the witness had taken torch light while going to Rayachoti village.

B In our view, those submissions require to be rejected mainly on the ground that P.W. 1 is related to the deceased. His going and residing at the house of the deceased is corroborated by the evidence of P.Ws 2 and 3. P.W.2 has specifically deposed that P.W.1 had come to their house before few days of the incident. They were together at Rayachoti is also established by independent government officers. Not only this, an independent witness, C namely, the bus conductor has specifically deposed that he saw along with the deceased P.Ws 1, 5 and 10 in the bus which started from Rayachoti at about 9.30 p.m. In this set of circumstances, it is difficult to accept the contention that P.W.1 was not at all present at the time of occurrence. D Presence of P.W.1, therefore, cannot be termed as impossible. Further, some variations in the story of P.W.1 and 10 as to who was walking ahead and who was following at the time of attack would not make their evidence in any way doubtful. Such types of variations are natural unless the witnesses are E tutored. Further, the reason for purchase of bus-tickets by P.W.5 is not required to be explained and this submission does not require any further consideration. In any case, it depends upon the relation and the amount of bus-tickets is absolutely small one. Similarly, the reason for keeping the torch is also not required to be stated as it depends upon the practice of villagers who are required to travel at night time in the area having no electric lights or street lights.

F The learned counsel further submitted that grounds given by the trial court for not believing the evidence of P.W.10 were reasonable and, therefore, the High Court materially erred in interfering with the acquittal order. In our view, the said submission is without any substance because the trial court materially erred in treating this witness as a hostile witness only on the ground that the Public Prosecutor after obtaining the permission had asked a question G with regard to the role played by the accused Nos. 4 and 6 on the basis of his police statement. In our view, there was no reason for the learned Judge to treat this witness as not supporting the prosecution case. On the contrary, this would mean that the witness was truthful and he has not supported his police version with regard to the identification of accused Nos. 4 and 6. From this also, he H cannot be dubbed as a liar to whom no credence can be given as held by

the learned Sessions Judge. In our view, the approach of the learned Sessions Judge in treating this witness as a hostile witness and terming him as a liar is, to say the least, wholly unjustified and unreasonable.

Mr. Rao, learned senior counsel further pointed out that the Sessions Judge has rightly not believed the evidence of P.W. 8 who is a bus conductor by holding that P.W. 8 was required to attend the duties for several trips and it is unnatural on his part to say not only about four particular persons travelled in the bus, but also that P.W.5 purchased the bus tickets for three other passengers. In our view, it is hardly a way of appreciating the evidence of an independent witness who was knowing the deceased as well as the witnesses. Bus conductor remembered the incident in view of the fact that they boarded the last trip from Rayachoti and on the next morning P.W.1 boarded the said bus at 5.30 a.m. for going to the police station and during the talk with P.W.1, he was informed about the murder of the deceased. As stated above, in our view, he is an independent person not connected with the accused or the witnesses and there is no reason to doubt his evidence.

In this view of the matter, in our view, the High Court was fully justified in reversing the acquittal order passed by the Sessions Court whose approach in appreciating the evidence of the material witnesses was absolutely unreasonable and unjustified. In the result, the appeal is dismissed.

R.P.

Appeal dismissed.