G.P.L. Narasimha Raju And Ors. vs State Of Andhra Pradesh on 12 October, 1970

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Bench: S.M. Sikri, V. Bhargava

JUDGMENT

S.M. Sikri, J.

1. Fifteen persons were tried by the learned Sessions Judge, Visakhapatnam, on various charges Under Sections 120B, 148, 147, 447, 302 read with 34, 302 read with 149, and 302. He acquitted accused Nos. 6, 13, 14 and 15 and convicted the other accused under various sections. The High Court, on appeal, acquitted accused No. 12. Accused Nos. 2 and 8 have been released by the Government and accused No. 7 has recently died. We are left with the appeals of accused Nos. 1, 3, 4, 5, 9, 10 and 11.

2. It was the case of the prosecution that at the time of the occurrence accused No. 1 was armed with a single barrel gun, accused No. 3 with a double barrel gun and accused No. 4 also with a double barrel gun, and the rest of the accused were armed with sticks, etc. Out of the 15 original accused, accused Nos. 1, 3, 5 and 6 were residents of Chowduvada, accused No 4 was resident of Dwarapudi. Accused Nos. 8 and 15 were from Rajam Bheemavaram and accused Nos. 9 to 13 were from Sivarampuram and accused No. 14 was from Ghodavaram.

3. The case of the prcsecution, in brief, was that these accused formed into an unlawful assembly and in order to take forcible possession of the casuarina tope belonging to Shaik Abdul Kareem Saheb, called Ramannadhora beedu, went to the land and caused the death of the said Kareem Saheb and 8 others, in pursuance of the conspiracy. Apart from causing the death of 9 persons they also caused various injuries to some other persons. It was further the case of the prosecution that Kareem Saheb having purchased Ramannadhora beedu under Ex.P. 6, sale deed dated May 2, 1957, from P.W. 23, had raised the casuarina tope therein about eight years ago; that the western boundary of this land was RamamurtiRaju's tope; that Saheb's coolies had planted the casuarina tope till the old tope of Ramamurti Raju on the west; that this tope in Ramannadhora beedu was younger than the Ramamurti Raju's by 2 or 3 years and that these two topes could be distinguished from one another as Saheb's tope was planted in regular rows while the tope of Ramamurti Raju was planted in a zig zag manner, the latter being older than the former. It was the further case of

prosecution that Saheb had been in possession and enjoyment of this tope by getting its branches cut and the dead trees removed and sold away.

4. The case of the defence was that Abdul Kareem Saheb was in unlawful possession of the tope and the land on which trees or casuarina existed belonged to accused No. 1, and that they were entitled to the right of private defence.

5. The learned Sessions Judge came to the conclusion that he was not concerned with the question of title of the land, and that there was abundant oral evidence to prove the possession of Kareem Saheb, and further there was no evidence to prove that accused No. 1 and his family were in possession of the disputed tope. The learned Sessions Judge relied on the evidence of a number of witnesses and also relied on the local inspection which he made. He observed in his judgment :

> At the time of the local inspection, it was clearly visible that the disputed tope was planted in regular rows, while the tope to its west, stated to be that of Ramamurti Raju, was not planted in such rows but those trees were planted in a zig zag way, from which it is clear that those topes must either belong to different persons or they must have been planted at different times by different persons. Moreovre, the age of Ramamurti Raju's tope seems to be older, as the trees are higher than those in the disputed tope and the girth of the trees also is more than the trees in the disputed tope. The physical features of these two different topes probablise the prosecution case that the disputed tope belongs to Saheb and it is younger than its Western tope of Ramamurti Raju and they are planted in different ways.
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> He repelled the argument of the defence that the witnesses who had spoken on the question of possession were interested. He observed that "even if they are coolies, they do the work for their daily wages and they need not speak falsehood. That apart P.W. 2 is the eastern neighbour, while P.Ws. 11 and 22 are the northern owners. They are quite independent and respectable witnesses, having specific knowledge of the possession and enjoyment of the disputed tope by Saheb."

6. The High Court examined the evidence and the circumstances and concluded :

> In these circumstances, we completely agree with the trial Court that the prosecution has succeeded in proving that it was Saheb who was in possession of the land in dispute from the time he obtained his possession from P.W. 16 till the time of his death. We are, therefore, satisfied, that the accused had no right of defence of the property which did not belong to them.

7. The learned Counsel for the appellant tried to persuade us to differ from the concurrent findings and pointed out certain documents on the record, but these documents are relevant only to the question of title and not to the question of possession. The learned Counsel urged that the boundaries of the land belonging to Saheb had not been shown, and as a matter of fact the accused were willing to have a survey made, but the Court turned down the application for the survey of the

land. He said that the evidence led by the accused should be accepted and there was documentary evidence to show prima facie that accused No. 1 was in possession. Further the prosecution has not examined ed or given the evidence of Ramamurti Raju who was plaintiff in a suit of specific performance. We informed the learned Counsel that we were prepared to decide on the presumption that the disputed land belonged to the accused, but even then he has not been able to displace the concurrent findings regarding possession arrived at both by the learned Sessions Judge and the High Court.

8. The learned Counsel then urged that the accused had the right of defence of person and he said that what happened was that a party, the strength of which was atleast 150 coolies, headed by Saheb came and confronted the accused whose party was only about 22-25; the mallies and Saheb had knives and lathies and the distance between the two groups was so close that it was reasonable for the are used to believe that their lives were in danger. He said that the medical evidence clearly showed that the firing was done at very close quarters and it is also clear that some of the accused were injured. He said that the High Court was in error in holding that the injuries were self-inflicted or self-suffered. He further said that investigation was dishonest and evidence favourable to the accused had been suppressed while evidence was created to implicate the accused. He finally urged that at any rate it is doubtful whether accused No. 4 was present on the scene at all.

9. Coming to the question of right of defence of person it seems to us that the circumstances do not show that the complainants' were the aggressors, It is true that the firing was resorted to at very close quarters because the medical evidence shows that a number of injuries on various deceased persons were scorched and tatooing was also present over some injuries. But then there was no scorching or tatooing on the injuries on some of the deceased. For instance on the body of deceased Sanapathy Appalanayudu, although he had nine wounds no tatooing, charring or scorching was found. Similarly on the body of Abdul Karim no charring or scorching or tatooing was found. Similar is the case of the body of Palli Ramulu.

10. It seems to us that during the incident some shots were fired at very close quarters while other shots were fired from a distance exceeding three feet. We cannot draw any inference in favour of the accused at all that the distance was so close between the two groups that it was reasonable to believe that the lives of the accused persons were in danger. There are alleged to be fourguns with the accused and it seems to us that some guns must have been reloaded to kill nine people.

11. We agree with the High Court that if all the persons belonging to both the groups were at close quarters the injuries received by A1, A3 & A9, even if they are assumed to have been inflicted during the course of this incident, would have been much more serious. In this connection we agree with the contention of the learned Counsel for the appellants that there seems to be tampering of the injury record of the accused. We looked at the certificates of accidents and it seems to us that all the certificates had been altered in order to show the age of the wound as "three to four hours". The original time and age mentioned seems to have been "24 hours". This suggestion of alteration was made to the Civil Assistant Surgeon, Chodavaram, when he appeared in the witness box, and he was not able to explain this overwriting. But even assuming that the injuries were caused about the time of the incident it does not render the story of the prosecution any the less believable. All the injuries,

including in jury No. 1, on accused No. 1 were simple. Accused No. 1 had five injuries, accused No. 5 had six injuries, accused No. 10 had four injuries, accused No. 9 had five injuries and accused No. 11 had four injuries. None of those injuries were incised a,nd the point attempted to be made by the learned Counsel that the coolies had knives with them looses much of its force. If the coolies were the aggressors and they had knives they would certainly have inflicted incised injuries.

12. It seems to us that the other circumstances relied on both by the learned Sessions Judge and the High Court support the case of the prosecution. The beginning of the incident, as deposed by the prosecution witnesses is as follows:

> Saheb engaged coolies and his Malis to get his tope in Ramana Dhora beedu cut; that he began to cut it from 1-7-65 and finished cutting in two thirds portion on the east by 6-7-1965; that on that day, the first accused and his men came in a jeep with guns and obstructed cutting of the disputed tope claiming it to be that of the first accused; that the first accused sent word to his vendor and panchayatdars including P.Ws. 14 and 16, who came and informed the first accused and his men that this disputed tope also was raised by Saheb and Saheb has been in possession and that it does not belong to the first accused. The first accused claimed that it is his tope, as he got it in the auction and also in the survey. The first accused has threatened to sheet if they cut the disputed tope. Saheb said that he will not cut it till the dispute is settled either by panchayatdars or by Court and so he diverted his men to cut his other topes in Narella Garuvu and Pasala garuvu.
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> It further appears from the evidence, as found by the High Court, that when the panchayatdars were asked by A-1 to quite, P.Ws. 14, 18 and 19 and some of the coolies were going away when the shots were fired at the instigation of A-8. The High Court then observed :
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> The coming of the accused into the disputed land was, in our opinion,according to a premeditated plant. On the previous occasion, i.e., about 20 days before the incident A-1 had come armed and had held out a threat that if anybody cuts trees in the tope he will be shot dead, and this interval of time may have been availed of for preparations to execute the plan. When they arrived in the morning of 20-7-1965 in the disputed tope, A-1 to A-4 were armed with guns A-7 had kathuva while the other had sticks. But all of them had come with the same common object. This is evident from the fact that after the shots were fired, the coolies and malies were running away but excepting A-1 to A-4 and A-8, other were seen chasing the malies and coolies of the Saheb. A-7 beat the Saheb with his kathuva and he was also seen taking away something cut of his pocket. A-1 to A-3 and A-4 used shot guns while A-2 is alleged to have used a rifle. As We "have already observed earlier all the deceased persons and P.Ws. 1 to 7 had gun-shot wounds on them, and from the bullet that was extracted from the body of Boddu Appanna, the deceased it is established that he had received a rifle shot. Coming on the scene armed with fire arms indicates nothing but naked aggression while on the other side none of the persons had any weapons. The

> proximity of the Saheb and his coolies does not appear to be strange or threatening because the panchayatdars were trying to bring about a compromise and were shuttling between the Saheb and A-1.

13. We agree with the High Court that in these circumstances there Was no reasonable cause for the accused to resort to firing. As the High Court observed, "even after the coolies and malies were running away holter skelter shots were fired and they were chased. In these circumstances it can hardly be said that the shots were fired to prevent on attack on their person." It is true that the prosecution witnesses do not explain the injuries on the accused but it may be that the injuries were self-suffered, and in spite of the fact that the medical record has been tampered with we are unable to come to the conclusion that these injuries were inflicted at such a time as to cause the accused any reasonable apprehension about their safety.

14. The learned Counsel also said that the investigation was dishonest in many respects. He said that the following four circumstances clearly showed the dishonesty of the investigation:

> (1) P.W. 16's statement was alleged to have been recorded in K.G. hospital by the police on August 4, 1965, while the evidence of the investigating officer and the medical evidence clearly showed that he was unfit to speak on that date;
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> (2) It was wrong that investigation started at 5 a.m.; in fact the investigation started at 8 a.m. and the two head-constables clearly deposed falsely in this respect, and as a matter of fact they were charged for not having come on duty at 5 a.m.;
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> (3) In the case diary page 27 is missing. This question was put to P.W. 71 who said he gave it to P.W. 72, who said that it was not given to him. This was supposed to be a statement of P.W. 24 Under Section 161, Cr.P.C.; and (4) Two sticks were alleged to have been recovered by the police but only one was produced.

15. It seems to us that this investigation has not been above board, but considering the nature of the case the local police seems to have lost its nerve. They had nine dead bodies on their hand and apparently the case was a bit too big for the local police. But the circumstances found by the High Court & the learned Sessions Judge were to clear to cost any doubt on the findings arrived at by them. P.W. 16 admits that he was speechless in the hospital and that he told the police about his beating in Anakapalli. P.W. 16 was also examined by P.W. 70, Sub-Inspector Police. The learned Sessions Judge dealt with this criticism as follows :

> P.W. 72, the Circle Inspector says that he examined P.W. 16 on 4-8-65 in the K.G. Hospital, Visakhapatnam, at his bed and recorded his Section 162, Cr.P.C. statement. But, the doctor, P.W. 50, the Neuro Surgeon, who has treated him (P.W. 16) says that till 11-8-65 he was not in a position to say even his name. It seems the copy of Section 162 Cr.P.C. statement of P.W. 16 supplied to the accused consists of the short statement recorded by P.W. 72 and the subsequent statement record of by Sub-Inspector, P.W. 70, both mingled together, and showed it as one recorded by

P.W. 72. But, subsequently, P.W. 72 has pointed out that he has recorded only the first one or two sentences and the rest were recorded at a later stage by the Sub Inspector, P.W. 70. Even then, in view of the evidence of P.W. 50, the Neuro Surgeon, P.W. 72 could not have recorded even that much of the short statement from P.W. 16 on 4-8-65. I think P.W. 72 has asked some questions to which P.W. 16 must have answered by gestures which he was able to do from the beginning and therefore P.W. 72 must have deduced his answers. Even that is a wrong method, P.W. 72 does not seem to be correct in saying that he has examined and recorded the Section 162 Cr.P.C. statement of P.W. 16 on 4-8-65.

It seems to us that this finding of the learned Sessions Judge that P.W. 72 had asked questions to which P.W. 16 must have answered by gestures does not seem to be wrong. If P.W. 72 was going to fabricate the records he would have put down the whole statement rather than two sentences.

Regarding the other irregularities the learned Sessions Judge thought that they did not amount to illegalities and the accused were not prejudiced because of these irregularities. It seems to us that the learned Sessions Judge was right in so holding.

The High Court, on this aspect of the case, observed :

Considering the volume of work in this case, the Superintendent of Police deputed a number of Inspectors and Sub-Inspectors to help P.W. 72, who is the main Investigating Officer in this case, and as the saying goes, too many cooks spoil the broth, there have been undoubtedly some defects and irregularities which are apparent on face of the record.

The High Court further observed :

but it has been shown to us what measure of prejudice has been caused to the accused thereby. Unless it appears to us that a Police Officer has abused his position in the discharge of his duties or has acted dishonestly on (which) some oblique motive, mere defects or irregularities would not be sufficient to quash the proceedings.... But in the present case we do not find that the mistakes, errors or irregularities in the investigation were deliberate and dishonest and, therefore, we are not prepared to draw any adverse inference against the prosecution.

The learned Counsel said that prejudice follows automatically from these irregularities but we are unable to agree with him. In the circumstances of this case we are not prepared to say that any prejudice has been caused to the accused.

16. As far as accused No. 4 is concerned, the learned Counsel urged that there are a number of circumstances which belie the evidence of the eyewitnesses that he was present and participated in the firing. He urged that nobody said that his shot hit any particular person who died as a result

thereof. The dying declaration of Rongala Appanna, Ex. P-45, does not name him specifically but only says that "Panskalaraju. Butchibabu, Ganeshbabu and some others came.... There were guns with the above three persons and with two others." Similarly in the Inquest Report only accused Nos. 1, 2, 3 and some others are mentioned, who fired the guns. In the F.I.R. also his name was not specifically mentioned. We may mention, however, that the F.I.R. is based on the dying declaration of Rongala Appanna. Similarly in the F.I.R. drawn up on the report of the Village Munsif his name is not specifically mentioned Further the dying declaration of Palla Ramulu similarly does not mention his name specifically; neither does the dying declaration of Chipurpalli Yerriah mention his name specifically. He only says that "all the Rajus present there fired their guns, that means they fired." The dying declaration of Rongalla Raj Naidu only says, "Rajus were about 30 and odd There were five guns." In his second dying declaration, Ex.P. 11, he could not tell the names of Rajus. Similarly in the dying declaration of Roddu Samudram only one Raju is mentioned specifically, namely, accused No. 1.

17. The learned Counsel further argued that accused No. 4 was at Pinavemali on that day because after working in the factory on July 19, 1955 upto 5 p.m. he went to Pinavamali. We may mention that he admitted that he was working as a grade Fitter in the Govada Sugar Factory and that he was absent from duty from July 31, 1965, as per Ex.P. 8 entry in the attendance register, and that on July 17, 1965, he sent a letter for leave on July 20, 1965 and July 21, 1965, and that on July 22, 1965 he sent a telegram to extend his leave till July 31, 1965. The learned Counsel also urged that accused No. 4's name was not mentioned in the remand report made by P.W. 72.

18. The learned Sessions Judge observed regarding accused No. 4 that "P.Ws. 2, 5, 7 to 13, 16 and 17 have stated that he was present amongst the accused at the time of the occurrence armed with a gun and they have identified him in this Court. In the Central Jail Visakhapatnam, he was identified by P.Ws. 5, 7, 9, 10 and 11. " The learned Judge further observed that "there is no proof of his going to Pina Vemali on 19-7-65 or on 20-7-65. The evidence of the eye witnesses shows that he was present armed with a double barrel gun, aiming at the coolies of Saheb." The learned Judge discounted the point of the defence about the omission of his name in F.I.R. by saying that the names of the assailants need not be mentioned in the F.I.R. He further observed that some of the witnesses have described the 4th accused in the early stages of the investigation as the person having a clean shaved head and wearing a cap. The learned Sessions Judge then observed that accused Nos. 4 & 5 were related to the first accused and it is quite possible that they may be accompanying the first accused in his jeep to his casuarina tope now and then & in this connection P.W. 17 could have seen them, as he has staged in his evidence.

The High Court held:

> A-4 has been identified by P.Ws. 2, 5, 7 to 13, 16 and 17 as the person who was in the party of the accused and was armed with a gun. He was also identified by P.Ws. 5, 7, 9, 10 and 11 in the Central Jail at Visakhapatnam and he did not adduce any evidence to prove that from 19-7-65 to 20-7-65 he was in Pinavamali village.
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> The High Court accordingly held that his presence had been proved by the witnesses.

19. It seems to us that the learned Sessions Judge and the High Court came to the to correct conclusion. All the documents mentioned above, referred by the learned Counsel, mention more than three Rajus. It seems that the name of A-4 was not known to most of the people there.

20. The learned Counsel for the respondent referred to the evidence of Ballistic expert P.W. 68, who examined the barrel washing of the weapon, M.O. 2 and detected combustion products of smokeless powder, i. e. ordinary gun powder, M.O. 2 admittedly belonged to accused No. 4. In his statement accused No. 4 had said that he purchased M.O 2 fifteen ays before the police seized it from his house and he had not fired it from that time.

21. This evidence and accused No. 4's absence from the factory corroborates the evidence of the eye-witnesses. The learned Counsel has not been able to show us any strong ground for interfering with the concurrent finding of fact arrived at by the two Courts below in this respect.

22. The learned Sessions Judge sentenced accused Nos. 1, 2, 3 and 4 and some others to imprisonment for life. The High Court issued notice of enhancement and imposed the sentence on A1 and A3. The High Court observed :

> When the prosecution had succeeded in connecting A-1 and A-3 directly with the death of more than one person mentioned above the only proper sentence to be awarded was that of death. The reason given by the learned Sessions Judge for passing a lesser sentence is that A-1 to A-4 were found in a drunken state at the time of the offence and he has treated it as an extenuating circumstance. But this view is wholly erroneous. In certain circumstances drunkenness can be pleaded to bring an offence under an exception provided in the Penal Code but it cannot be treated as a mitigating circumstance particularly when the accused may have consumed alcohol to get into proper mood to commit the offence.

23. We agree with the High Court that the reasons given by the learned Sessions Judge for passing a lesser sentence were not very sound. But we are also of the view that the reason given by the High Court for imposing the sentence of death on A-1 and A-3 but not on A-2 and A-4 is not sound either. The only reason given by the High Court for enhancing the sentence of A-1 and A-3 is that the prosecution had succeeded in connecting A-1 and A-3 Directly With the death of more than one person. But in this case nine persons had been shot dead and there is no doubt that A-2 and A-4 must also have been responsible for causing the death of some of the deceased. The reason given for distinguishing the case of A-1 and A-3 from A-2 and A-4 is thus not sound, and We, therefore, set aside the order of enhancement passed by the High Court and restore the sentence imposed by the learned Sessions Judge.