Kutumbaka Krishna Mohan Rao And Others vs Public Prosecutor, High Court Of A.P. ... on 9 January, 1991

Equivalent citations: AIR1991SC1314, 1991CRILJ1711, JT1991(5)SC447, 1991SUPP(2)SCC509, AIR 1991 SUPREME COURT 1314, 1991 SCC(CRI) 1074, 1991 (5) JT 447, (1992) 2 CHANDCRIC 39, AIRONLINE 1991 SC 223

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Bench: S.R. Pandian

JUDGMENT

S. Ratnavel Pandian, J.

1. There were two groups in the village of Venkatayapalem in Khammam district. One group was led by Kutumbaka Basava Narayana (A-4) supported by Congress Party and the other group by deceased No. 1 supported by C.P.I. Number of incidents took place and a bitter enmity existed between the two factions which also led to filing of criminal cases.

2. On 4-11-1975 a large scale rioting took place in the village in the course of which two persons died and several witnesses particularly P.Ws. 1 to 5 belonged to the deceased party, received injuries. In respect of the said occurrence, the police charge-sheeted as many as 43 accused. The learned Sessions Judge, Khammam tried all the 43 accused for offences punishable Under Sections 147, 148, 302 read with Sections 149, 324, 325, 326, I.P.C. On behalf of the prosecution as many as 23 witnesses were examined. Out of them P.Ws. 1 to 8, 9, 12, 13 figured as the eye-witnesses. P. Ws. 10 and 11 are the doctors and others are the official witnesses. The accused pleaded not guilty. However, three of them pleaded alibi including A-16, D.Ws. 1 to 4 were examined. The trial Court having examined the evidence found it difficult to accept the prosecution case and acquitted all the accused. The State being aggrieved by the judgment, filed an appeal against acquittal against all the acquitted accused. A Division Bench of the High Court to a large extent, agreed with the findings of the trial Court. It also held that common object of the lawful assembly was only to cause grievous hurt and that the fatal blow cannot be attributed to any particular accused. So far as the attack on deceased No. 2 is concerned, the High Court found that the prosecution has not established the guilt of any of the assailants. It, however, convicted A1 to 3, 5, 11, 16, 19, 23, 30. Out of them A19, 23 and 30 were convicted Under Section 147, I.P.C. and sentenced to one year RI. The others were convicted Under Section 148 and sentenced to two years and Under Section 326 read with Section 149, I.P.C. sentenced to 7 years. These 9 convicted accused are the appellants before us in the appeal pursuant to the granting of special leave.

3. Mr. K. Madhava Reddy and Mr. U. R. Lalit learned Counsel appearing for the appellants submitted that the High Court having agreed with the reasoning of the Sessions Court on all material aspects and having rejected the substratum of the prosecution case, gross erred in convicting the appellants. It is also their submission that the reasons given for rejecting the evidence of D.Ws. 1 to 4 regarding the alibi of Al and 16 are also unsound.

4. We have carefully perused the evidence of P.Ws. 1 to 5 relied upon by the High Court and the reasons given for accepting their evidence in part. All these five witnesses are injured. It is on the basis of their evidence, the High Court convicted A1 to 3, 5, 11 as having attacked the deceased No. 1. From their evidence, it can be seen that they have attributed overt acts to some of the accused in respect of attack on deceased No. 1, but that part of evidence is not believed. The only reason that seems to have weighed with the High Court for convicting these accused is that the medical evidence corroborates the evidence of these witnesses, in respect of injuries said to have been caused to deceased No. 1 in general. From the above narration it can be seen that the evidence of these witnesses is discarded by both the Courts so far as the attack on deceased No. 2 and also about other general features of the case. Therefore, we think it may not be safe to accept their evidence as against 1, 2, 3, 5, 11 who are said to have attacked the deceased No. 1. We may also point out at this stage that the High Court accepted their evidence to a limited extent only to fix the presence of the assailants. In a large scale rioting like this, we think it is highly doubtful that these witnesses could have observed the details of the attack on deceased No. 1 also. In any event since their evidence is not accepted on material particulars, applying the same reasoning, we give the benefit of doubt to A1, 2, 3, 5 and 11.

5. However, since these witnesses are all injured, their presence cannot be doubted and in respect of their own assailants we do not find any reason as to why their evidence cannot be accepted to the extent held to be reliable by the High Court. The High Court has held that the participation of A16 in the attack on P.W. 1, A-19 and 23 on P.W. 3, and A23, 30 and P.W. 4 and A16, 19, P.W. 5 can be accepted. We have examined the reasons given by the High Court accepting the evidence of these witnesses to the extent of their own assailants and we see no reason to disagree with the same. In a case of this nature, the Court generally to fix the presence of an unlawful assembly, would first scrutinise the evidence of injured witness and if the same is corroborated by the medical evidence that can be accepted as against those accused who caused injuries and they can be held to be members of the unlawful assembly. This is on the ground that the witnesses at least, would be in a position to identify their own assailants. Applying this test, we are satisfied that the evidence of these injured witnesses can be accepted as against A16, A19 and A-23, A30 among the appellants. D.Ws. 2 to 4 were examined to prove the Alibi of A16. We have examined their evidence and we find it to be unsatisfactory.

6. A memo is filed stating that A23 died and is no more. So his appeal abates. In the result this appeal is allowed so far A1, A2, A3, A5 and All are concerned. The convictions of A16, A19, A30, are confirmed. So far as sentences are concerned, we think the ends of justice would be met if the sentence of imprisonment awarded as against A19, 30 is reduced to period already undergone as we are told that they were in jail for over 9 months. So far as A16 is concerned, the sentence is reduced to period already undergone but in addition his sentence to pay a fine of Rs. 3,000/-, in default to

undergo imprisonment for six months and the fine is directed to be paid within six months from today. Appeal allowed in respect of A1, 2, 3, A5 and All and dismissed as against A16, A19 and A30 subject to the above modifications of sentence. Appeal by A23 dismissed as abated.