

Chinta Pulla Reddy And Ors. vs State Of Andhra Pradesh on 30 March, 1993

Equivalent citations: AIR 1993 SC 1899, 1993 CRILJ 2246, 1993(1) CRIMES 1136(SC), JT 1993(3) SC 633, 1993(2) SCALE 354, 1993 SUPP(3) SCC 134, AIR 1993 SUPREME COURT 1899, 1993 AIR SCW 1843, 1993 (3) SCC(SUPP) 134, 1993 SCC (SUPP) 3 134, 1993 CRIAPPR(SC) 107, (1993) 3 JT 633 (SC), 1993 APLJ(CRI) 378, 1993 SCC(CRI) 875, 1993 (2) UJ (SC) 197, (1993) SC CR R 575, (1994) 1 MAHLR 285, (1993) 3 RECCRIR 319, (1993) 2 CURCRIR 100, (1993) ALLCRIC 524, (1993) 2 CHANDCRIC 255, (1993) 2 ALLCRILR 14, (1993) 1 CRIMES 1136

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Bench: N.P. Singh

JUDGMENT

A.S. Anand, J.

1. For an occurrence which took place on the night intervening the 31st May and 1st June, 1982, at about 1.00 a.m, in which one Iragana Gurava Reddy was murdered, six persons, namely, Dagumati Vankata Subha Reddy (A1); Chinta Pulla Reddy (A2); Balamreddi Pulla Reddy (A3); Gaddam Pulla Reddi (A4); Gaddam Panchala Reddy (A5) and Bade Rami Reddi (A6) were challaned and ultimately sent up for trial before the Additional Sessions Judge, Nellore. The first charge against the accused was under Section 148 IPC. They were all convicted of the said charge and each of the accused was sentenced to two years' R.I. The second charge against A1 was for an offence under Section 302 IPC. He was convicted for the said offence and sentenced to suffer imprisonment for life. The third charge was for an offence under Section 302/149 IPC against remaining accused persons. The conviction was recorded for the offence under Section 302/149 IPC against A2 to A6 and each one of them was sentenced to suffer imprisonment for life. Against their conviction and sentence all the accused-convicts appealed to the High Court. The High Court acquitted A3 and A6, but maintained the conviction and sentence of A1 for the offence under Section 302 IPC and altering the conviction of A2, A4 and A5 from the one under Section 302/149 IPC to the one under Section 302/34 IPC maintained the sentence of life imprisonment. Conviction and sentence for the offence under Section 148 IPS was, however, set aside. After the judgment of the High Court was delivered, it appears that A1 died. A2, A4 and A5 have filed this appeal, on special leave being granted.

2. Though generally speaking this Court does not reappreciate the evidence in an appeal, on special leave being granted, under Article 136 of the Constitution of India where two courts have appreciated the evidence and recorded concurrent findings, but since the High Court acquitted A3 and A6, we have, with the assistance of learned Counsel for the parties, ourselves appreciated the material evidence in the case, with a view to determine whether the conviction and sentence recorded against the three appellants is justified or not.

3. The First Information Report in this case, Ex.P-1, was lodged at 7.30 a.m. by PW1, son of the deceased. It was scribed by LW-9, who however was not examined at the trial. In the First Information Report, besides A1 to A6, 30 other persons A7 to A36, with their parantage, were also named as accused persons. During the investigation, however, PW1 in his statement recorded under Section 161 Cr. P.C. by the investigating officer, categorically asserted that he had not told the scribe that 30 persons A7 to A36, apart from A1 to A6 had also come armed to the house of the deceased at the time of occurrence. Even at the trial, PW1 mentioned that apart from A1 to A6, no other person was mentioned as an accused by him to the police. The statements of other witnesses recorded under Section 161 Cr.P.C. also implicated only A1 to A6 in the crime. The investigating officer, therefore, had challaned only A1 to A6 and sent them for trial.

4. It is the prosecution case, that earlier in the evening of 31.5.1982, Seshamma, PW8 was assaulted by some persons, belonging to the party of A1 in front of the house of A1 and on learning about the assault, the deceased along with his wife PW4, went to the house of A1 where A2 was also present to reprimand them for assaulting a lady. A1 and A2 took objection to the reprimand and threatened the deceased and P-W4 that they would see "the end of the deceased". The deceased and his wife were told to leave and they went back to their house. Regarding the incident relating to the assault on PW8, a complaint was lodged with the Police and a constable PW9 was deputed to go to the village to see that no further occurrence takes place in view of two factions in the village.

5. On the night of 31.5.1982, the wife of the deceased, PW4, went to the house of her son, PW1 and told him as to what had happened in the evening and the threat which had been administered to them by A1 and A2. She asked PW1 to go to the house of his brother PW2 and sleep there along with PW2 as the deceased was staying with PW2 at that time. PW1 obeyed the command of his mother and went to the house of PW2 and slept there leaving his mother PW4 to stay in his house. Both PW1 and PW2 slept for the night near the cot of their father. A hurricane lantern was burning and both PWs 1 and 2 also had torch lights with them when they went to bed. On hearing the cry of their father, at about 1.00 a.m., PW1 and PW2 and also PW3, wife of PW2 and the daughter-in-law of the deceased who was sleeping inside the house woke up and saw six accused present there. They found A1 and A2 standing near the cot towards the head of the deceased, while A3 to A6 were standing on the southern side of that cot. All the accused were allegedly armed. After saying as to what they were waiting for, A1 is alleged to have stabbed the deceased, with a knife which he was carrying, twice near his chest. None of the other accused, however, caused injury to the deceased. The witnesses, PW1, PW2 and PW3 saw and identified the accused in the light of the hurricane lantern and by flashing torch lights. After threatening the prosecution witnesses, all the accused left the place and went away. PW1 sent information to his mother about the injuries caused to the deceased and himself went to the house of Sudhakara Rao, LW9 and asked him to scribe the report, Ex.P1 which

he presented to the investigating officer, PW13 at about 7.30 a.m. The Inspector of Police, PW14 after receipt of the F.I.R. along with PW13 and some constables proceeded to the spot and conducted the investigation. Various articles were taken into possession from the place of occurrence, including the blood stained clothes of the deceased and blood stained earth. The deceased had in the meanwhile succumbed to the injuries. PW4 and others had also arrived and were present at that place. Inquest proceedings were conducted and PWs 1 to 4 were examined by the investigating officer. The dead body of the deceased was then sent for post-mortem examination. PW5 conducted the post-mortem examination. He found two stab injuries besides three other injuries on the dead body of the deceased. Both, injuries 1 and 2, which were found to be the stab wounds in the chest had caused damage to the vital organs of the deceased. According to the opinion of the doctor PW5, the deceased died as a result of shock and haemorrhage on account of the injuries to the lung, liver and heart which were referable to injuries 1 and 2 allegedly caused by the two stab wounds inflicted by A1. The investigating officer during the investigation examined some other witnesses including PWs 6, 7 and 9 and ultimately made efforts to arrest the accused persons. They were, however, found absconding. The challan was filed without any delay and at the trial, the prosecution examined 14 witnesses to connect the accused A1 to A6 with the crime. All the accused in their statements under Section 313 Cr.P.C. denied the occurrence and pleaded false implication due to factional rivalry in the village. A1 and A2 pleaded alibi and in support of the plea of alibi examined DW2, DW3, DW4 and DW5.

6. The High Court after consideration of the evidence on the record, as already noticed, convicted A2, A4 and A5 and acquitted A3 and A6. The High Court disbelieved the defence witnesses and rejected the plea of alibi set up by A1 and A2. For acquitting A3 and A6, the High Court found that since on PW2's own showing he had told the police that he had not mentioned the names of A4 to A6 to his mother as the assailants of his father and PW9, constable Nasthanaiah, had deposed that PW2 had informed him "that A1, A2 and four others stabbed his father and went away", it would not be safe to convict A3 and A6 and giving them benefit of doubt acquitted them.

7. Mr Lalit, learned senior counsel appearing for the appellants has submitted that the grounds on which benefit of doubt was given to A3 and A6 were also available in so far as A4 and A5 are concerned and the High Court has not given a distinguishing feature in so far as they are concerned and, therefore, their conviction cannot be sustained and they also deserve to be acquitted like A3 and A6. A careful examination of the evidence of PWs 1, 2, 3 and 9 would go to show that they specifically implied only A1 and A2 as the persons present together near the cot. According to PW2 "I told the police that I told my mother and my brother Iraga Ramanareddy and others that A1 to A3 were the assailants of my father". According to PW9, the constable who was present in the village, "At about 1 a.m. (in the night) we heard cries from the western direction. We went to the house of PW2 and found the deceased, lying dead with bleeding injuries on a cot. PW2 informed us, that A1, A2 and four others stabbed his father and went away. When we asked PW2 to give a report, he stated that his brother PW1 left for Atmakur in order to give a report. Thereafter, we went to the house of A1 and A2, but they were not in their houses." PW1 in his statement categorically stated that "I did not tell the scribe of Ex.P1 that A2, A3, A4, A5, A6 stabbed indiscriminately my father with the knives in their hands". Referring to the earlier incident of the evening, when his father and mother had gone to the house of A1, PW1 stated that A1 and A2 on being reprimanded had

threatened by father with dire consequences. PW4, the widow of the deceased who had accompanied her husband to the house of A1 in the evening deposed "I and my husband went to the house of A1 and questioned A1 and A2 who was also present there as to why Seshamma was beaten by their party people. Thereupon, A1 and A2 took objection for questioning them and stated that they would look to his deceased fate." Thus, it was, according to the prosecution case, A1 and A2 who alone had administered the threat and who had taken strong exception to the reprimand by the deceased. A4 and A5 did not figure in the earlier episode, which provided the immediate motive, for the commission of the crime.

8. The evidence led by the prosecution about the actual assault during the night on the deceased also specifically implicated A1 and A2 only. According to PW1, "I saw only A1 stabbing my father. I did not see any other accused stab my father. A1 stabbed my father on the right chest near the nipple and below the nipple". After stating, that all the six accused had come armed, the witness admitted in the cross-examination that "I and my brother did not address A1 and A2 why they had come to commit that heinous crime". This part of his testimony is also supported by PW2. According to PW3, the wife of PW2, she had seen A1 and A2 standing together near the head of the cot. As already noticed, the first version given by PW2 to the constable PW9 who reached the house of PW2 on hearing the cries, PW2 had informed him that "A1 and A2 and four others" had stabbed his father. After the occurrence, after PW1 had left the house for lodging the report, the villagers alongwith PW9 also only went to the houses of A1 and A2 to search for them and they did not go in search for A4 and A5.

9. According to the medical evidence, only two stab injuries were found on the deceased and according to the eye-witnesses both the injuries had been caused by A1. Keeping in view the evidence relating to the threat administered in the evening and the statement of PW2, the son of the deceased made to PW9 immediately after the occurrence, it appears to us that the prosecution has not been able to establish beyond a reasonable doubt the participation of A4 and A5 in the crime. In our opinion, the case against A4 and A5 has not been established beyond a reasonable doubt and they are therefore entitled to the benefit of doubt

10. Coming now to the case of A2. We are unable to agree with Mr. Lalit that his participation in the crime has not been established, It is the consistent case of the prosecution that both A2 and A1 had administered the threat in the evening to the deceased and his wife when they had gone to reprimand A1 for the assault on PW8. They, therefore, had the immediate cause and provocation for the assault on the deceased in furtherance of the threat administered by them earlier. The testimony of PW1, PW2 and PW3 who are the natural witnesses and are the eye-witnesses, is consistent in so far as the presence of A1 and A2 at the time of occurrence is concerned. They have clearly deposed about the manner in which A1 and A2 were standing towards the head of the cot armed with knives as also how A1 stabbed the deceased twice on his chest. The witnesses knew both A1 and A2 and had identified them clearly. Their testimony leaves no manner of doubt to hold that A2 along with A1 had come armed with knives to the house of the deceased and both were present at the middle of the night near the head of the cot on which the deceased was lying when A1 stabbed him twice in the chest and thereafter left together. Both A1 and A2 had thus, shared the common intention of causing the death of the deceased, as according to the medical evidence, the two stab injuries inflicted on the

deceased on his chest were Sufficient in the ordinary course of nature to cause death.

11. The plea of alibi put up A1 and A2 need a notice only to be rejected. The testimony of the defence witnesses DW2 to DW5 does not inspire any confidence. In the cross-examination, the story given out by them has been successfully shattered. We are in agreement with the High Court that the plea of alibi is false and we are of the view that the same was rightly rejected by the courts below. Both A1 and A2 were named as the assailants at the earliest point of time by PW2 to constable PW9. Since, A1 and A2 had been named as the assailants by the eye-witness, constable PW9 and others had rushed to the house of A1 and A2 but they had absconded. A careful analysis and appraisal of the evidence on the record shows that A2 was present on the night of the occurrence with a knife alongwith A1, who was also armed with a knife, and had shared the common intention with A1 of causing bodily injuries to the deceased which were sufficient in the ordinary course of nature to cause the death of the deceased. Section 34 IPC is, therefore, clearly attracted to the case of A2, even though he did not by himself cause any specific injury to the deceased. The High Court had rightly convicted both A1 (since dead) and A2 for the offence of murder of the deceased. The conviction of A2 for an offence under Section 302/34 IPC is, therefore, well-merited and the sentence of imprisonment for life imposed upon him is justified.

12. As a result of the above discussion, we give benefit of doubt to the two appellants, Gaddam Pulla Reddy (A4) and Gaddam Panchala Reddy (A5) and setting aside their conviction acquit them of the charges against them. We, however, uphold and maintain the conviction of A2, Chinta Pulla Reddy, for the offence under Section 302/34 IPC and also the sentence of life imprisonment imposed upon him by the High Court. As a result while the appeal of A4 and A5 succeeds and is allowed, the appeal of A2 fails and is dismissed. A2 is on bail. His bail bonds are cancelled and he is directed to be taken into custody to suffer the remaining period of his sentence.