

Bolineedi Venkataramaiah And Others vs State Of Andhra Pradesh on 17 March, 1993

Equivalent citations: AIR1994SC76, 1994CRILJ61, 1994SUPP(3)SCC732, AIR 1994 SUPREME COURT 76, 1993 AIR SCW 3449, 1995 SCC(CRI) 191, 1994 (3) SCC(SUPP) 732

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Bench: G.N. Ray

JUDGMENT

1. This appeal pursuant to the special leave granted is directed against the concurrent judgments. The three appellants along with 6 others were tried for offences punishable under Sections 148, 302/149, and 449, I.P.C. The trial court convicted all of them. On appeal, the High Court, however, confirmed the sentence awarded against these three appellants (original accused Nos. 4, 5 and 6) and acquitted rest of the accused, namely A-1, A-2, A-3, A-7, A-8 and A-9.

2. The prosecution case is as follows: The accused and the deceased Bolineedi Venkateswarlu and the material witnesses are the residents of Village Vepakampalli within the limits of Karampudi Police Station, Andhra Pradesh. All the accused are inter-related and so are rest of the eye-witnesses. There was a bitter enmity between the members of the prosecution party and that of the accused party. It started with a civil dispute in respect of the vacant site of 25 cents. There were police complaints also alleging interference with possession. In that dispute, the deceased was supporting one Chirumanilla Venkayya. On 26-4-1983, the date of incident, the deceased, P.W. 1 and P.W. 11 went to the house of P. W. 2 at about 9.00 p.m. to find out as to what happened to the compromise in the civil dispute. P.W. 2 told them that there were good chances of arriving at a settlement. Thereafter the deceased, P.W. 1 and P.W. 11 came out of P.W. 2's house and the deceased was going to his house towards north. P.W. 1 and P.W. 11 started going to their house towards south and when P.Ws. 1 and 11 proceeded about 30 yards, they heard the cries of the deceased. They turned back and saw all the accused armed with spears, chasing the deceased. The accused caught up with the deceased near the well, surrounded him and caused multiple injuries on several parts of his body. In that attack specific overt acts are attributed to Accused Nos. 4, 5 and 6. The deceased, however, wriggled out of the attack and holding his chest with his hand, ran to the nearby house of P.W. 13. The accused followed him, went inside the house and caused several multiple injuries and then thinking that he had died, they left the place. This incident was also witnessed by P.Ws. 2, 3, 4, 5, 10, 11 and 13. After the accused left the scene of occurrence, the eye-witnesses went near the deceased and found him groaning in pain. After half an hour they put him in a cart and took him to the Police Station. On the way, the deceased expired. Then P.W. 1 went to the Police Station and gave the report on the basis of which the case was registered. An inquest was held and the dead-body was sent for post-mortem. The Doctor, P.W. 6 who conducted the post-mortem found 20

injuries on the body, most of them incised wounds. The doctor, however, was of the opinion that injury No. 5 was itself fatal. He was also of the opinion that the cumulative effect of all the injuries was necessarily fatal and that all the injuries were sufficient to cause death in the ordinary course of nature. The prosecution relied on the evidence of the above mentioned witnesses. The trial Court, as stated above, accepted the prosecution case and convicted and sentenced the accused.

3. In the appeal before the High Court, it was contended on behalf of the defence that this incident took place out of acute enmity and the evidence of the eye-witnesses should be rejected as there is likelihood of implicating some innocent persons. The High Court rightly held that their evidence cannot be rejected on the sole ground that they are interested witnesses and proceeded to scrutinise the same with greater care and caution. In that process, the High Court was of the view that only such of those accused to whom specific overt acts have been attributed consistency can safely be convicted. In that process, the High Court came to the conclusion that so far A-3, A-7 and A-8 and A-9 are concerned, no specific overt acts have been attributed to them. So far as A-1 and A-2 are concerned, P.W. 1 in his deposition did not attribute specific overt acts to them though other witnesses have attributed specific overt acts to them. Giving the benefit of doubt to these accused, the High Court acquitted them.

4. In this appeal, the learned Counsel for the appellants submits that the High Court having acquitted 6 of the accused erred in convicting these 3 accused relying on the self-same evidence of the eye-witnesses. His next submission is that the 3 accused, even if the evidence of the prosecution witnesses is to be accepted, caused injuries which are only simple and there is no other evidence as to what happened inside the house since P. W. 13 was the owner of the house and had been treated hostile. Consequently, at the most they can be convicted for causing simple injuries and the question of applying Section 149 or Section 34, I.P.C. does not arise. Incidentally, the learned Counsel for the appellants has contended that there was delay in giving the F.I.R. and therefore, the prosecution case should be viewed with suspicion.

5. The presence of the eye-witnesses, at this stage, cannot be doubted because both the courts below have discussed this aspect in detail and have given cogent and convincing reasons in accepting their evidence. However, since they are interested witnesses, their evidence was subjected to greater scrutiny and one of the tests applied is whether the specific overt acts are attributed to them so that the omnibus allegations may not be accepted so as to rule out the possibility of implicating some innocent persons. In appreciating evidence of this kind of witnesses, the courts have always considered that such of those accused to whom specific overt acts have been attributed consistently and the same is corroborated by the medical evidence and the circumstances of the case, can safely be convicted. Therefore we are unable to agree that on the mere fact that the other accused are acquitted the same evidence cannot be accepted against these three appellants whose overt acts have been specifically mentioned consistently from the beginning.

6. So far as delay is concerned, the anxiety of the persons concerned was to take the injured to the Police Station or to the hospital at the earliest moment as by then the deceased was still alive. At any rate there is no inordinate delay because the report was given on that very night though after about 5 hours' delay. No doubt, the witnesses have deposed that in the first instance when the unlawful

assembly chased the deceased, these accused inflicted injuries, one on the right thigh, another on the left thigh and one on his back. But for arriving at a conclusion of constructive liability what the courts have to see is whether they had common intention or common object and the ingredients are to be considered in convicting by application of Section 149 or Section 34, I.P.C. The Court has to look into the proved circumstances like the formation of the unlawful assembly, the weapons with which they were armed and the active role played by them. The witnesses have consistently deposed that the members of the unlawful assembly of which these three appellants were members, chased the deceased armed with spears. While chasing they surrounded the deceased and inflicted injuries with their respective weapons and these three accused also inflicted injuries with these sharp-edged weapons. At that juncture the deceased managed to escape and ran into the nearby house. The witnesses have consistently deposed that the members of the unlawful assembly chased the deceased and went into the house and inside the house only P.W. 13 was there, but he turned hostile. However, the proved circumstances established that they were members of the unlawful assembly, chased the deceased and necessarily they must have also inflicted injuries which ultimately proved fatal.

7. In our view these circumstances are enough to invoke Section 34 or Section 149, I.P.C. even against these three appellants taking the transaction as a whole into consideration. For all these reasons we see no merit in this appeal. The appeal is accordingly dismissed.