Supreme Court of India
Bandarupalli Venkateswarlu vs State Of Andhra Pradesh on 5 November, 1974
Equivalent citations: AIR 1974 SC 2363, 1975 CriLJ 21, (1975) 3 SCC 492, 1974 (6) UJ 709 SC
Author: Chandrachud
Bench: P Bhagwati, Y Chandrachud
JUDGMENT Chandrachud, J.

1. Though seven persons were originally put up for trial in the Sessions Court, Krishna Division, Machilipatnam, we are now concerned only with one of them, Bandarupalli Venkateswarlu, who was arraigned as accused No. 3. The learned Sessions Judge convicted the appellant under Section 304, Par' II, Penal Code, and the remaining six under Section 304 read with Section 149. The judgment of the Sessions Court was challenged by the accused as well as the State Government. The High Court of Andhra Pradesh allowed the appeal filed by the State partially by convicting the appellant under Section 302 and accused Nos. 5 and 6 under Section 302 read with Section 34 All of these were sentenced to imprisonment for life. The remaining four were acquitted by the High Court.

2. The special leave petitions filed by accused Nos. 5 and 6 were dismissed by this Court on September 14, 1970. The special leave petition filed by the State Government against the acquittal of accused Nos. 1, 2, 4 and 7 was also dismissed by this Court on the same date. The jail petition filed by the appellant came before this Court subsequently when special leave was granted to the appellant to appeal against the judgment of the High Court.

3. The incident out of which the prosecution arises happened at about 4.30 p.m. on February 24, 1968 in a place called Kanehikacherla. The deceased Arikatla Kotesu, a young Harijan boy, used to make out his livelihood by working as a coolie. On February 24, 1968 he was passing through the village of Kanehikacherla when the appellant and two other accused are alleged to have questioned him whether he had stolen their brass utensils. They tied his hands with a rope and tried to extort a confession from him. The boy admitted that he had sold the utensils to a hotel keeper who, at the demand of the accused, produced the utensils. The accused then brought the boy to a tobacco barn. They tied him with a rope and asked him to divulge details of the other thefts committed by him. Accused No. 6 is alleged to have poured kerosene on the boy after which the appellant lighted a match and set fire to his clothes.

4. The deceased Kotesu managed to run away and the first thing he did was to contact a private doctor who advised him to go to the Government hospital or to police station. At about 5.30 p.m. the deceased went to the police station at Kanchikacherla where his statement, Ex. P-56, is said to have been recorded. He was thereafter admitted to the Government Hospital where his dying declaration, Ex. P-61, was recorded at about 9.30 the next morning. He succumbed to his injuries on the afternoon of the 26th.

5. Ten out of the thirteen witnesses examined by the prosecution as eyewitnesses turned hostile, leaving the evidence of P.W. 1 to 3 only for consideration The High Court was not impressed by the evidence of P.W. 1 and thus the narrow question for examination in this appeal is whether the evidence of P.Ws. 2 and 3 is sufficient to sustain the conviction of the appellant under Section 302,

Penal Code.

6 Before considering the evidence of these two witnesses, it would he necessary to make a brief reference to the statement, Ex.P-56 alleged to have been made by the deceased to P.W. 19, the Station Writer. That statement purports to contain the names of the accused but the High Court, very rightly refused to act on it. If the deceased had mentioned the names of the accused to the Station Writer, the requisition (Ex P-57) sent by the Writer to the Medical Officer would not have contained a vague statement that the body was "burnt by someone" from Kanehikacherla and that the body was being forwarded for medical treatment Besides, had the appellant disclosed the names of the accused to the Station Wriner, it is unlikely that he would have failed to mention their names in the dying declaration, Ex P-61. It seems clear that the deceased could have identified those who killed him but he did not know them by their names. But then the statement, Ex. P-56, and the dying declaration would afford no basis for sustaining the conviction of the appellant. The former is incredible and the latter innocuous.

7. The evidence of Devireddi Pullaiah, PW 2 & Kommanaboyina Yellamanda, PW3, establishes the complicity of the appellant beyond any doubt. They had no reason to implicate him falsely nor did they have any interest in the deceased. PW 2 has staled that accussed No. 6 poured kerosene on the clothes of the deceased and the appellant set fire thereto: P.W. 4 reached the scene of occurrence on hearing the cries of the deceased and noted the presence of the appellant. The evidence of these witnesses has been accepted by both the courts and we see no reason whatever to differ from that view.

8. The evidence of P.Ws. 2, and 3 finds corroboration in that of Poketi Gantalu, P.W. 14, and Thota Subba Rao, P.W. 15. The deceased had pledged the utensils with P.W. 14. His evidence shows that the appellant asked him to produce the utensils. The importance of the evidence of this witness consists in the fact that the entire incident from the time that the accused first accosted the deceased until the deceased was set on fire is a part of one single transaction. The fact that the appellant asked P.W. 14 to produce the utensils which the deceased had sold to him or had pledged with him corroborates the evidence of the eye witnesses that the appellant had taken a leading part in the murder of the deceased.

9. At the time of his arrest, the appellant had burn injuries on both of his palms. Considering the nature of those injuries it is impossible to accept his explanation that he received the burns due to the spilling of boiling water. The evidence shows that the appellant made some attempt to put out the fire and it is in that process that he received the burn injuries.

10. Relying on the circumstance that the appellant tried to put out the fire, learned Counsel for the appellant urged that the appellant had no intention to commit the murder of the deceased and cannot therefore be convicted under Section 302. It is impossible to accept this submission because if the appeallant set fire to the deceased after accused No. 6 had poured kerosene on his dody, there cannot be any doubt that the intention of the appellant was to kill the deceased.

11. We therefore dismiss the appeal and confirm the judgment of the High Court in so far as the appellant is concerned.