Supreme Court of India
Pedda Narayana & Ors vs State Of Andhra Pradesh on 8 April, 1975
Equivalent citations: 1975 AIR 1252, 1975 SCR 84
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
PEDDA NARAYANA & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT08/04/1975

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
UNTWALIA, N.L.

CITATION:
1975 AIR 1252 1975 SCR 84
1975 SCC (4) 153
CITATOR INFO :
RF 1986 SC 250 (39)
R 1991 SC1853 (8)
D 1992 SC 49 (15)
R 1992 SC 891 (15)

ACT:
Evidence-Appreciation of-Omission of details in First and Inquest Report-Effect of-Code of Criminal Procedure (Act 5 of 1898) s. 174-Scope of.

HEADNOTE:
The first accused borrowed money from the deceased and as the money was not repaid the deceased filed a suit against him. Angered by being drawn into litigation, A. 1 to A. 3 and three others came upon the deceased in a jeep driven by A. 4, and A. 1 to A. 3 getting down from the jeep stabbed the deceased with daggers and while the deceased was falling down carried him away in the jeep. The companion of the deceased at the time when the occurrence took place gave the first information to the police. Three days after the incident the dead body was recovered, and inquest was held. The four accused were charged with offences of murder and kidnapping, but the trial court acquitted them for the reasons : (i) the First Information did not contain the

overt acts attributed to each of the accused; (ii) details of the overt acts were not mentioned in the Inquest Report and therefore it must be inferred that the eye witnesses did not mention the overt acts to the police; (iii) there was no reliable evidence identifying the dead body, and (iv) the motive was not sufficient to impel the accused to murder the deceased.

On appeal the High Court convicted A. 1 to A. 3 for offences tinder s. 302 read with ss. 34 and 148 and under s. 364 read with s. 34 I.P.C.- A. 4 was convicted under s. 302 read with s. 149 and under s. 364 read with s.-34, I.P.C.

Dismissing the appeal to this Court of A. 1 to A. 3 and allowing that of A. 4,

HELD : The High Court rightly believed the evidence of the prosecution witnesses and there was no error in its approach to the case. [91 A-B].

(1) The witness who gave the first information must have been extremely perturbed having seen the attack on his companion. Even so, all the essential details which a first information should contain are there. The names of the accused and the circumstances of the murderous assault are mentioned. Shorn of minute detail the broad picture presented by the prosecution was mentioned in the first information which was lodged soon after the occurrence. it is neither customary nor necessary to mention every minute detail in the first information. [88 A-C]

(2) The object of the inquest proceedings under s. 174 Cr. P.C. is merely to ascertain whether a person has died under suspicious circumstances or whether it was a case of unnatural death, and if so, what was the apparent cause of death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances is foreign to the proceedings. Therefore, neither in practice nor in law was it necessary for the police to have mentioned details of all the overt acts of the accused in the inquest report. From such absence of details in the inquest report it was wrong to presume that the witnesses did not mention the details to the police during investigation. [89 C-E]

(3) The dead body was identifiable and was identified by the son of the deceased, the witness who gave the first information and a co-villager. [90 E]

85

(4) Various persons react to circumstances in different ways and it is difficult to say when a motive would be sufficient for a crime. Moreover, in view of the independent testimony of eye witnesses, whom the High Court has believed the question of motive become academic. [90G-H].

(5) This is not a case where two views are possible. The only possible view is that taken by the High Court and the High Court rightly reversed the acquittal under s. 417 Cr. P. C. [91 C-D].

6(a) The medical evidence showes that the deceased must have died before the body was put in the jeep and so the charge of kidnapping fails. [91D-E].
(b) As regards A. 4 there is no reliable evidence to prove actual complicity in the murder. He is a young boy of 18 engaged as a driver. His name is not mentioned in the first information to the police as having taken any part in the assault. [91 H].
(c) Therefore, he could not be convicted for murder. He could be guilty of the offence under s. 201 I. P. C. but he was acquitted of that charge by the trial court. The High Court had not convicted him under that section and no appeal against his acquittal has been filed in this Court and hence he could not be convicted of that offence either. [92 C-D].

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 92 of 1971.

From the Judgment and Order dated the 31st December, 1970 of the Andhra Pradesh High Court in Criminal Appeal No. 868 of 1969.

P. Basi Reddy and G. Narayanarao, for the appellants. P. Rama Reddy and P. P. Rao, for the respondent. The Judgment of the Court was delivered by FAZAL ALI, J.-Appellants A-1 to A-3 have been convicted under s. 302 read with s. 34 I.P.C. as also under s. 148 I.P.C. They are also convicted under S. 364 read with s. 34 I.P.C. A-1 to A-3 have been sentenced to imprisonment for life under s. 302 read with S. 34 and A-4 has been awarded the same sentence under s. 302 read with s. 149 I.P.C. Under s 364 read with s. 34 the four appellants have been awarded five years rigorous imprisonment each. In view of the sentences passed, no separate sentence was imposed under ss. 147 and 148 I. P. C. The accused had been acquitted by the Additional Sessions Judge, Anantpur, in the State of Andhra Pradesh. On appeal against acquittal filed by the State before the High Court of Andhra Pradesh, the appeal was allowed and the appellants A-1 to A-4 were convicted and sentenced as mentioned above. Against these convictions, the present appellants have preferred this appeal to this Court. As the High Court had awarded the sentence of life imprisonment after reversing the order of acquittal passed by the Additional Sessions Judge, the appeal to the Supreme Court lies even on facts and as a matter of right under s. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

The prosecution case may conveniently be divided into four separate parts-Part-I constitutes the immediate motive for the murder of the deceased; Part 11 relates, to the visit of the deceased to Anantpur where he was shadowed and threatened and forms the genesis of the occurrence; Part III consists of the actual murderous assault on the deceased resulting in his death and the last part-Part IV-relates to the recovery of the dead body three days after the occurrence. This is rather an unfortunate case where the appellants sought to hit upon a preconceived plan to do away with the life of the deceased animated by rancor and hatred resulting from the act of the deceased in

embroiling the accused in a litigation over a monetary transaction.

In order to understand the case put forward by the prosecution it may be necessary to give briefly a resume of the four stages of-. the prosecution case. Part-I. The story of the prosecution begins with, the purchase of a jeep by A-1 and his brother being jeep No. A.I.A. 2781 from one Kona Rama Subbareddi for a consideration of Rs. 6,000/-. In order to meet the consideration of the jeep A-1 and his brother had borrowed a sum of Rs. 6,900/- on April 18, 1964 from the deceased after executing a promissory note in his favour. As this money was not paid by A-1 to the deceased, the deceased brought a suit in the Court of the Subordinate Judge, Anantpur for realisation of the amount. Some time in the year 1969 A-1 filed an Insolvency Petition before the Subordinate Judge showin- his debts to the tune o@ Rs. 1,96,000/-. The suit filed by the deceased was posted on February 6, 1969 for evidence to be given by A-1 and this appears to have been the immediate provocation and occasion- for planning the murder of the deceased by the appellants.

Part-II. In view of the fact that the suit was posted to February 6, 1969 the deceased along with P. W. 1-who will hereafter be referred to as Chinna-proceeded to Anantpur on February 5, 1969 and reached there at 8-30 P.M. It is said that while P.W. 1 China and the deceased were alighting from the bus they saw A-1, A-2 and A-4 sitting in the jeep near the petrol pump which is situated near the bus-stand. Chinna and the deceased then went to the house of N. Narayana Rao, P.W. 20 who was their counsel and stayed there for the night. On the next day i.e. February 6, 1969 the suit was adjourned and after the adjournment of the case Chinna and the deceased went to the place where they were staying and on the way some persons with big mustaches appear to have threatened them. Chinna, however, did not take the threat seriously and proceeded to his destination. Part-III. On the night of February 6, 1969 the deceased and Chinna went to witness a picture called "Tenali Ramakrishna" in Raghuveera Talkies and it is said that some of the accused had also followed the deceased and went to see the cinema show. After returning from the picture, while the two persons namely Chinna and the deceased were proceeding south to north and had covered 20 feet from the hotel where they had taken their food, suddenly a jeep came and stopped near the deceased. According to the prosecution A-1 to A-3 got down from the jeep along with three other strangers and surrounded the deceased. Chinna was about one bara away from the deceased. Thereafter A-2 stabbed the deceased with a dagger on his stomach and A-1 stabbed him on the left side of the chest and when the deceased was about to fall A-3 is said to have stabbed the deceased with a dagger on his left knee. When Chinna P.W. I wanted to intervene he was threatened by the three stranger-who were armed With daggers and was pushed aside by those strangers. Before the deceased could fall down on the ground he was put into the jeep and carried away.

Part-IV. On February 9, 1969 P.W. 16 and the Inspector of Tadipatri Went to Cherlepalli for the purpose of investigation where P.W. 16 received information that a dead body was lying near the Railway gate at Taticherla. The, police party proceeded to that place and found a dead body lying on its back with injuries on the body. The body was, however, in a bloated condition. Subsequently.proceedings for inquest under s. 174 of the Code of Criminal Procedure were taken and after the usual investigation a charge-sheet was submitted against the appellants. We might mention here that the F.I.R. in the case was lodged by P.W. I Chinna on February 6, 1969 before the Sub-Inspector of Police, Anantpur Police Station and is Ext. P-1 in the case. The learned Additional

Sessions Judge after consideration of the evidence produced before him acquitted the accused without considering,, the intrinsic merits of the evidence produced before him on purely general grounds and what he called inherent improbabilities arising out of the case. The High Court in appeal against the acquittal of the accused found that the learned Additional Sessions Judge was not at all justified in acquitting the accused and that the reasons given by him were wholly untenable in law and accordingly the High Court reversed tile order of acquittal and convicted A-1 to A-4. The acquittal of A-5 was, however, upheld by the High Court and we are not concerned with him in this appeal.

The learned counsel appearing for the appellants tried to support the judgment of the learned Additional Sessions Judge and pointed out a number of circumstances which according to him cast a serious doubt on the veracity of the prosecution case. In the first place, it was argued that the learned Additional Sessions Judge rightly held that as the F.I.R. did not contain the overt acts attributed to each of the accused, the story of the prosecution must be held to be an after-thought. Dealing with this aspect of the matter the High Court pointed out that the F.I.R. was lodged soon after the occurrence and there was no occasion for the informant to have mentioned all the material particulars in the F. I. R. which had to be narrated and proved at the trial. We find ourselves in complete agreement with the reasons given by the High Court. In fact we find from the perusal of Ext. P1 that all the essential details that the F.I.R. should contain are given there. The names of the accused are clearly mentioned, the circumstances leading to the murderous assault on the deceased Linganna have been set out. It has also been mentioned that the accused got down from the jeep along with three strangers and stabbed the deceased and then carried him away in the jeep. It is also mentioned that the occurrence had taken place because the deceased had filed a civil suit against A-1 which constituted the motive for the, murder. Thus shorn of minutes detail the broad picture presented by the prosecution was undoubtedly revealed in the F.I.R. which was lodged very soon after the occurrence. In our opinion, it is neither, customary not necessary to mention every minute detail in the F.I.R. Chinna P.W.1 must have been extremely perturbed because the deceased Linganna had been suddenly attacked by a number of assailants and his body was carried away. It is in that state of mental agony that he was not able to give further details in the F.I.R. We are, therefore, clearly of the opinion that the reasons given by the learned Additional Sessions Judge for rejecting the prosecution case are wholly untenable in law. Another point taken by the learned Additional Sessions Judge was that in the inquest report details of the overt acts' committed by the various accused have not been mentioned in the relevant column. The learned Judge in fact has assumed without any legal justification that because the details were not mentioned in the requisite column of the inquest report, therefore, the presumption will be that the eye witnesses did not mention the overt acts in their statements before the police. To begin with it seems to us that the learned Additional Session Judges" approach is legally erroneous. A statement recorded by the police during the investigation, is not at all admissible and the proper procedure is to confront the witnesses with the contradictions when they are examined and then ask the Investigating Officer regarding those contradictions. This does not appear to have done in this case. Further more, proceedings for inquest under s. 174 of the Code of Criminal Procedure have a very limited scope. Section 174 of the Code as it then stood read as follows :

"174. Police to enquire and report on suicide. etc. (1) The officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf, on receiving information that a person-

(a) has committed suicide; or

(b) has been killed by another, or by an animal, or by machinery, or by an accident; or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub divisional Magistrate, shall proceed to the place where the body of such deceased person is and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

(2) * * * * (3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon; or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its, being so forwarded without risk of such putrefaction on the road as would render such examination useless."

A perusal of this provision would clearly show that the object or the proceedings under s. 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to bow the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under s. 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report. The High Court has adverted to this point and has rightly pointed out as follows "The learned Sessions Judge bad also stated that the details regarding the weapons armed by each of the accused and which accused had attacked on which part of the body of the deceased are not found in the inquest report and from this he sought to draw the inference that the statements of the witness now, found recorded under section 161 Cr. P.C. could not have been the statements then read over to the panchayatdars. Column 9 of the inquest report shows that the injuries on the deceased were caused by knives and daggers. Column 11 (a) shows that Al to A3, A4 and A5 with 3 strangers came in the jeep driven by A4, got down the jeep, stabbed the deceased with daggers and knives, pushed P.W. 1, lifted the deceased, put him in the jeep, and drove' away the jeep and death was the result of the injuries inflicted. The object of holding any inquest as can be seen from Section 174 Cr.P.C. is to find whether a person died a natural death, or a

homicidal death or due to suicide. It was therefore not necessary to enter all the details of the overt-acts in the inquest report. From the mere fact that these details were not noted in the inquest report it cannot be concluded that the statements given by the witnesses and read over at the inquest did not contain those overt-acts and the statements now produced are those of the witnesses which were taken later."

The High Court has thus rightly explained that the omissions in the inquest report are not sufficient to put the prosecution out of Court and the learned Additional Sessions Judge was not at all justified in rejecting the prosecution case in view of this alleged infirmity. The learned Additional Sessions Judge was- also of the opinion that there was no reliable evidence to identify the dead body of the deceased Linganna and on that ground the prosecution case could be rejected. This line of reasoning adopted by the Additional Sessions Judge is not borne out by the facts. The High Court pointed out in their judgment that there, was sufficient evidence before the Court to identify the body of the deceased. It is true that the dead body of the deceased was bloated but P.W. 16 the Sub- Inspector deposed in his evidence that the features of the body were quite clear and visible. The photographs of the body were taken by P.W. 19 and on seeing the photographs the High Court was satisfied that the body was easily identifiable. P.W. I Chinna who was fully known to the deceased and who had accompanied him to Anantpur and in whose presence the murder took place said that he went to the place where the body was lying and identified the body. The High Court also pointed out that P.W. I said that the belt, M.O. 6 which was usually worn by the deceased was also found on the dead body, which completely clinches the issue. Although P.W. I was cross-examined at very great length it was not suggested to him that the dead body found was not that of the deceased. The body of the deceased was also identified by another co-villager, and also by the son of the deceased. In these circumstances, therefore, there was abundant evidence to prove the identification of the dead body and the finding of the learned Additional Sessions Judge is based on a misreading of the evidence on this point.

The learned Sessions Judge further held that the motive ascribed to the appellants for committing the murder of the deceased was not sufficient to impel them to plan the murder of the deceased. This finding of the learned Sessions Judge is based purely on speculation. Various persons react to circumstances in different ways and it is difficult to weigh the reaction of the persons in golden scales with absolute computorised accuracy. There is no doubt that the deceased had drawn the accused in a long litigation involving thousands of rupees as a result of which he had to attend the Court at Anantpur on various dates. The sequence of circumstances under which the deceased was murdered clearly shows that there could not have been any other motive but the institution of the suit. The High Court has also pointed out that the prosecution has established good and sufficient motive for the murder of the deceased. Futher more, in view of the independent testimony of P.Ws 1, 2 and 3 whom the High Court has believed, and we see no reason to differ from the view of the High Court, the question of motive becomes more or less academic. On this point also, in our opinion, the learned Additional Sessions Judge has taken an absolutely wrong view.

We have been taken through the entire evidence of P.W. 1, 2 & 3 who are independent witnesses and against whom no animus has been established by the accused and we do not see any reason to disbelieve their evidence. The High Court, therefore, rightly believed their evidence in order to

accept the prosecution case. We do not find any error of law in the approach made by the High Court.

It was, however, submitted by Mr. Basi Reddy, learned counsel for the appellants that this was a case in which another view was also possible on the evidence and, therefore, the High Court ought not to have interfered with the order of acquittal passed by the learned Additional Sessions Judge, as held by this Court in several cases. After going through the evidence and circumstances of the present case, however, we are clearly of the opinion that the ratio of the cases decided by this Court is wholly inapplicable to the instant case and, therefore, the contention advanced by the counsel for the appellants in this Court is overruled. This is not at all a case where a second view was possible. On the other hand it was a case where the learned Additional Sessions Judge had given untenable reasons and where his approach was not only perverse, but also legally erroneous. In such circumstances, it can not be disputed that the High Court had ample powers to reverse the order of acquittal under s. 417 of the Code of Criminal Procedure.

As regards the case of A-4, we find that it stands on a different footing and there does not appear to be any legal evidence against this appellant. We are also satisfied that there is no reliable evidence to prove the charge under s. 364 I.P.C. According to the medical evidence the deceased sustained as many as six injuries. The position and the nature of the injuries particularly on the various parts of the body clearly show that they must have been inflicted on the deceased outside the jeep and not when the body was carried in the jeep of A-1. The medical evidence also shows that the deceased could have died instantly within minutes of the occurrence. On the other hand there is absolutely no evidence to show that any injury was inflicted either when the deceased was put into the jeep or when he was carried away in the jeep. From these circumstances, therefore, it is manifest that all the six injuries must have been caused during the course of the occurrence on the spot before the body was put into the jeep and in all probability the deceased must have died at the spot. If this was so, then the charge under s.364 I.P.C. must necessarily fail, because there was no question of kidnapping the deceased for the deceased had died even before he was kidnapped. So far as A-1 to A-4 are concerned, this question is more or less academic because they have already been convicted by the High Court under s. 302 read with s. 34 and A-4 under s. 302 read with s. 149 I.P.C. As regards A-4 is concerned, we are satisfied that there is no reliable evidence to prove his actual complicity in the murder of the deceased. The case of the prosecution is that A-4 who is a young boy of 18 years was employed as a driver of the jeep after the same was purchased by A-1. It is true that A-4 had taken A-1 to A-3 to the scene of occurrence. But this was a part of his duty and that by itself would not show a complicity in the offence of murder which was committed later. Although in the course of the trial the witnesses have stated that this appellant also tried to take the body in the jeep while he was sitting there or that he had come out of the jeep, this evidence cannot be accepted because it is nowhere mentioned in the F.I.R. that A-4 had taken any part in the assault on the deceased. There is only a reference to the three strangers and A-1 to A-3 and there is no reference to A-4 excepting that he was driving the jeep. In these circumstances we are unable to agree that A-4 had shared the common object of murdering the deceased at any stage. The only offence that could have been committed by A-4 was under s. 201 I.P.C. because after the deceased was put into the jeep he knew fully well that he had been assaulted by the appellants and was being taken away for the purpose of disposal of the dead body. Unfortunately, however, though A-4 was charged under s. 201

he was acquitted by the learned Additional Sessions Judge and even the High Court has not convicted him under that section. No appeal against his acquittal has been filed in this Court. In these circumstances therefore it is not possible for us to convict him for the first time under s. 201 I.P.C. in the present appeal. For these reasons therefore it follows that A-4, namely, Budekula Kullayappa is entitled to acquittal as his complicity in the actual assault on the deceased has not been proved. Nor has it been proved that he had shared the common object of the crime with others.

The result is that convictions and sentences passed on all the appellants under s. 364 read with s. 34 I.P.C. are set aside. The orders of conviction and sentence under s. 302 read with s. 34 in so far as A-1 to A-3 are concerned are upheld. The appeal of A-4 is allowed and the order of the High Court convicting him under s. 147 and under s. 302 read with s. 149 is set aside and he is acquitted and is directed to be released forthwith. The appeals of A-1 to A-3 are dismissed.

V.P.S. Appeals partly allowed