Supreme Court of India
Baddi Venkata Narasayya & Ors vs The State Of Andhra Pradesh on 24 November, 1997
Author: Thomas
Bench: M.K. Mukherjee

PETITIONER:
BADDI VENKATA NARASAYYA & ORS.

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 24/11/1997

BENCH:
M.K. MUKHERJEE

ACT:

HEADNOTE:

JUDGMENT:

THE 24TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr. Justice M.K. Mukherjee Hon'ble Mr. Justice K.T. Thomas S.Muralidhar, Adv. for S. Ravindra Bhat, Adv. for the appellants Ms. K. Amreshwari, Sr. Adv., G. Prabhakar, and V.R. Anumolu, Advs. with him for the Respondent J U D G M E N T The following Judgment of the Court was delivered: Thomas, J.

In this case of an organised mass attack unleashed on some unarmed victims 4 persons were killed and 17 were injured, many of them grievously. Police charge-sheeted 64 persons as accused in this case, but the Sessions Court convicted only 45 among them for various offences, common of which is rioting with deadly weapons. Among those accused who were convicted of murder, the trial court sentenced first accused to death and others who were convicted under Section 302 IPC with or without the aid or Section 149 IPC were sentenced to life imprisonment. Shorter terms of imprisonment were awarded to those accused who were convicted of lesser offences. Out of the 45 convicted persons one died after trial court judgment and so the High Court of Andhra Pradesh heard the appeals filed by the remaining 44 persons. A Division bench of the High court confirmed the conviction and sentence as against 35 of them, except that the sentence of death passed on t he first accused was reduced to imprisonment for life. This appeal has been filed by the aforesaid 35

persons after obtaining special leave.

The case put forward by the prosecution as against the appellants is, in short, this: A feud developed among the members of Yadav community in Chennapuram village. One division was headed by first accused (Baddi Venkata Narasayya ) and the other faction was led by Baddi Mallesu (one of the person killed). The acrimony which existed as between the two factions mounted up day by day and the police had to resort to proceedings under Section 107 of the Code of Criminal procedure against persons belonging to the rival groups, besides registering other criminal cases against some of them. But those steps did not abate the intensity of bitterness between members of the warring groups. Those belonging to the group led by Baddi Mallesu perched themselves in a Harijan colony at Chennapuram village and they thought that they were safe from the attack of the other faction. But such hopes were belied when all the accused marched to the Harijan colony armed with deadly weapons, such as spears, choppers, sticks, stones etc., during the morning hours of 30-10-1000 and made a massive attack on the persons who had sheltered themselves in different houses situated in the Harijan colony. What followed thereafter was a terribly violent mayhem. When the assailants retreated from the field four dead bodies and a large number of brutally mutilated persons were lying on the ground.

In the trial court prosecution examined altogether 49 witnesses which list included injured persons and other eye witnesses. Trial court and the High Court have made detailed evaluation of the evidence and came to the finding that there was an unlawful assembly consisting of the convicted persons the common object of a number of them was to kill the members of the rival faction.

After hearing learned counsel on both sides we are not persuaded to re-evaluate the evidence in view of the concurrent findings reached on the crucial points regarding formation of unlawful assembly and their common object.

Learned counsel for the appellant, however, submitted that in view of the large number of victims and assailants involved in this occurrence it is not expedient to confirm the conviction against those accused whose participation in the action has not been supported by the reliable testimony of at least two witnesses.

We too are of the opinion that on the facts and evidence in this case and on account of the large number of assailants and victims involved in the case it would be a prudent exercise to follow the ratio evolved by this Court in Masalti vs. The State of Uttar Pradesh, AIR 1965 SC 202, which was reiterated by this Court in later decisions including the recent one [Binay Kumar Singh vs. The State of Bihar 1997 (1) SCC 283]. We extract below the said ratio:

> " Where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident."

Learned counsel for the appellants contended that before the said formula is applied in this case, a little scrutiny of evidence is necessary for fixing up the reliability of the testimony of eye witnesses in so far as the accused are concerned. Learned counsel submitted that though some of the accused were identified in the trial court by more than one witness evidence of some of those witnesses is unreliable and hence such evidence must be excluded in which event those accused would also get the benefit of doubt arising thereby.

A-4 (Matta Kontolu), A-5 (Baddi Chinnavadu), A-8 (Baddi Venkatappadu) were identified in the trial court by three witnesses, PW-5, PW-6 and PW-15. But PW-6 did not mention the presence of those accused when he was questioned by the police during investigation and the testimony of PW-15 was disbelieved by the trial court due to a lot of material contradictions. We agree with the learned counsel for the appellants that in such circumstances no reliance shall be placed on the evidence of PW-6 and PW-5 and what would then remain is the solitary evidence of PW- 5 in regard to those three accused. We are inclined to give the benefit of doubt to A-4, A-5 and A-8.

A-9 (Beesingi Narayudu) and A-12 (Matta Mallesu) were identified by PW-10, PW-11, PW-12 and PW-15 in the trial court but the Sessions judge has accepted the evidence of PW-12 alone among them and rejected the rest. In that situation A-9 and A-12 also would get the same benefit. Though A-13 was identified by PW-11 and PW-12 the said accused too would be entitled to the benefit in view of the rejection of the evidence of PW-11.

Similar view can be adopted in case of A-33 (Matta Gaviresu) who was identified in the trial court by PW-27 AND PW-28 because the evidence of PW-28 was discredited on the crucial aspect concerning his presence at the spot, by contradicting him with the statement recorded by the police under Section 161 of the Code of Criminal Procedure. By allowing the above mentioned accused to pass out through the route to acquittal on the strength of the ratio of "two witnesses formula" the following accused cannot be convicted on the evidence in this case:

A-4 (Matta Kontolu), A-5 (Baddi Chinnavadu), A-8 (Baddi Venkatappadu), A-9 (Beesingi Narayudu)< A-12 (Matta Mallesu), A-13 (Matta Ramulu), A-33 (Matta Gaviresu), A-34 (Baddi Thavudu), A-35 (Matta Butchodu), A-37 (Baddi Venkayya), A-41 (Kalaga Atchayya), A-45 (Thanni Chinnappayya), A-46 (Matta Chinnodu), A-47 (Mata Appanna), A-48 (Matta Thavudu) and A-64 (Thanni Thavudu).We therefore, allow the appeal in respect of the above accused and set aside the conviction and sentence passed on them. They are acquitted. Those among them who are now remaining in jail must, therefore, be released forthwith unless they are required in other cases. The appeal as for the remaining appellants shall stand dismissed.