

Supreme Court of India

Anumula Papodu @ Thimmaiah vs Public Prosecutor on 27 August, 1993

Equivalent citations: 1994 AIR 1070, 1994 SCC Supl. (1) 89

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

ANUMULA PAPODU @ THIMMAIAH

Vs.

RESPONDENT:

PUBLIC PROSECUTOR

DATE OF JUDGMENT 27/08/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

RAY, G.N. (J)

CITATION:

1994 AIR 1070

1994 SCC Supl. (1) 89

JT 1993 (5) 254

1993 SCALE (3) 586

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- There are nine appellants. They along with three others were tried for offenses punishable under Sections 148, 302/149, +From the Judgment and Order dated September 28, 1979 of the Andhra Pradesh High Court in Criminal Appeal Nos. 393 and 1310 of 1978 324, 326, 324/149 and 326/149 IPC. The trial court acquitted A- II and A- 12 and convicted the appellants under Sections 148, 324 and 324/149 IPC and sentenced each of them to undergo RI for 18 months under Section 148 and 21 months on each of the other two counts. They were, however, acquitted of the murder charge. A- IO died during the trial. The State preferred Criminal Appeal No. 393 of 1978 against all the 11 accused questioning their acquittal of the murder charge. The nine convicted accused preferred Criminal Appeal No. 1310 of 1978. The High Court disposed of both the appeals by a common judgment and dismissed Criminal Appeal No. 1310 of 1978 filed by the accused but allowed Criminal Appeal No. 393 of 1978 filed by the State against A-1 to A-9 and convicted all the nine accused under Sections 302/149 and 326/149 and sentenced each of them to undergo imprisonment for life and RI for three years

respectively. The sentences were directed to run concurrently. Hence the present appeals.

2. Since these are regular appeals filed under Section 379 CrPC read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, we have gone through the judgments of both the courts below and also the depositions of the material witnesses.

3. The prosecution case is as follows:

There were long-standing factions between the family of Gunnala Ramachandra Reddy, deceased No. 1 (D-1) and that of one Narasimhulu, an Advocate. Both the families are natives of Nallagatla Village of Allagadda Taluk of Kurnool District. Issac, deceased No. 2 (D-2), PWs 1, 4, 5, 7, 8 and 9 and others are the followers of D-1. A-1, A-2 and A-5 are the brothers of Narasimhulu. A-3 and A-4 are his nephews. The other accused were also his followers. The factions were in existence since 20 years and there were several riotings and murders between the two factions resulting in criminal cases. In February 1976, a case involving seven deaths was pending trial against the party men of the Advocate Narasimhulu. PWs 1, 5, 7, 9 and some others of D-1's party were witnesses for the prosecution in that case. Due to the bitterness of feelings between the parties and the tense atmosphere, bandobust constables were posted in the village to maintain law and order. D-1, PWs 1 and 8 had to attend the court of the Judicial First Class Magistrate, Allagadda on February 23, 1976. They left their houses in the morning for the bus-stop to go to Allagadda along with some of their partymen including PWs 4, 5, 7 and 9. PWs 3 and 6 also came to the bus-stop. They missed two or three buses. Later they got into a bus along with D-1 and D-2. They alighted at the bus-stop Allagadda and were proceeding to the town along the road. PW 2 who was near the brokers' office, also joined them and they were all proceeding talking to each other. It was then about 11.30 a.m. or so. When they reached the house of Advocate Narasimhulu, A-1 armed with a hunting sickle and A-4 armed with a spear suddenly came out of the house and A-4 stabbed D-1 on the left side of the ribs with the spear. A-1 cut D-1 on his right wrist with the hunting sickle. A-2, A-3 and A-5 to A-12 also joined A-1 and A-4. A-2, A-6 and A-8 were armed with hunting sickles. A-5 was armed with a battle-axe. A-3, A-7 and A-9 to A-12 were armed with spears. PWs 4, 5, 7 and 8 intervened and pushed D-1 towards the pial of Lakshmi Narasimhulu. A-1 to A-5 went up to the pial and attacked D-1 with the weapons in their hands. When D-2 tried to intervene, A-6 to A-10 attacked him with the weapons in their hands. The other PWs tried to intervene. In the process PW 1 received an incised injury on his wrist. PW 2 was also stabbed with spear by A-3. PW 3 was cut on the right side of his forehead with a battle-axe by A-5. PW 4 was cut with hunting sickles by A-1 and A-6 on several parts of his body. PW 5 was cut with a battle-axe by A-5 and was stabbed with spear by A-7. PW 6 was also stabbed but he did not know exactly who stabbed him. PW 7 was hacked by A-5 on his right shoulder and head and poked with a spear on his right chest by A-10. PW 8 was cut with a hunting sickle on the head by A-2 and was stabbed on his head with a spear by A-3. PW 9 was inflicted a stab wound on his right upper arm, by one of the assailants. Then the accused left the scene. PW 1 immediately ran to the police station and informed the Inspector of Police, PW 18 about the occurrence, who made an entry in the general diary and proceeded to the scene of occurrence with a Head Constable and some constables. On reaching the scene of occurrence, he found the dead body of D-1 lying with multiple injuries and D-2 was lying in a precarious condition by the side of D-1. He sent D-2 immediately to the Government Hospital, Allagadda. PWs 4, 5, 7 and 8 were also lying with

injuries. They were also sent for treatment later. PW I gave a report about the occurrence and the case was registered. D-2 died in the hospital. Post-mortem was conducted on the two dead bodies and there were number of incised wounds all over the bodies. Likewise there were incised wounds on PWs 1 to 9. The accused were arrested and after completion of the investigation, the chargesheet was laid. The plea of the accused was one of complete denial and they stated that they were falsely implicated.

4. PWs 1 to 11 figured as direct witnesses. Out of them PWs 1 to 9 were injured during the occurrence in which D-1 and D-2 sustained fatal injuries. On a consideration of the evidence of these witnesses, the learned trial Judge accepted the case of the prosecution almost in total. He, however, acquitted A11 and A-12 completely since no overt acts were attributed to them and also on the ground that the name of A- II was not mentioned in the FIR. In conclusion he made the following order:

"On a careful consideration of all the circumstances stated above I accept the evidence of PWs 1 to 11 and hold that though it is not sufficient to establish the guilt of accused 11 and 12, it conclusively proves the participation of accused 1 to 9 in the commission of offence."

Having given such a categorical finding, the learned trial Judge, however, convicted A-1 to A-9 only for minor offenses simply holding that there is no positive and conclusive evidence to bear out as to who inflicted the injuries on the two deceased and the common object of the unlawful assembly was to assault the deceased and his men and that subsequently it cannot be said that A1 to A-9 shared the common object to cause the death of Ramachandra Reddy, D-1 and Issac, D-2. In this view of the matter he acquitted A- 1 to A-9 of the murder charge.

5. The High Court virtually confirmed the findings of the trial court in all respects but reached the conclusion that the trial Judge grossly erred in holding that the common object of the unlawful assembly was not to commit murder. The High Court examined the evidence of the injured witnesses again and agreed with the findings of the trial Judge that A-1 to A-9 participated in the occurrence. It can therefore be seen that there is a concurrent finding that A-1 to A-9 participated in the occurrence in which the two deceased persons received fatal injuries and PWs 1 to 9 received several simple and grievous injuries.

6. Learned counsel for the appellants submitted that the view taken by the trial Judge is not altogether erroneous and that being so the High Court erred in convicting A-1 to A-9 under Sections 302/149.

7. Though both the courts below have believed the evidence of PWs 1 to 9, we have, however, examined their evidence. The presence of PWs 1 to 9 at the scene of occurrence cannot be doubted. The names of these nine appellants are mentioned in the FIR given almost immediately. The occurrence itself, has taken place in the town at a place which is close-by to the police station also. The medical evidence also establishes that cutting weapons were used in inflicting the injuries on the two deceased persons as well as on the injured witnesses. The trial Judge failed to notice that all the nine accused along with some others emerged in a body and all of them participated in the

occurrence. We are unable to see as to how the trial Judge could come to the conclusion that the common object of the unlawful assembly was not to commit murder. There are number of injuries on both the deceased persons on vital organs. The attack on PWs as well as on the two deceased persons was at the same time and at the same place. All the appellants were armed with deadly weapons and inflicted injuries with them. Assuming the witnesses have not narrated the details on the attack on the two deceased persons, that by itself is not a ground to hold that the common object of the unlawful assembly was not to commit murder. On D-1 there were as many as 16 incised wounds all over the body and on D-2 there were as many as 10 incised wounds. As a matter of fact PWs 1, 4, 7, 8 and 9 have given some details of attack on D-1 and D-2. In any event it is impossible to hold under the circumstances that the common object of the unlawful assembly was not to commit murder. When once the evidence of PWs 1 to 9, the injured witnesses is believed by the courts below, the only conclusion that can be reached is that all the assailants were members of an unlawful assembly and their common object was to commit the murder of D-1 and D-2 and to cause injuries to PWs 1 to 9. In our view, the High Court has rightly interfered and has convicted the appellants for the offence of murder and for causing grievous hurt to PWs 1 to 9.

8. There are absolutely no merits in these appeals. Accordingly both the appeals are dismissed.

-----