

Supreme Court of India

Alapati V.S. Murthy vs State Of A.P on 28 April, 1994

Equivalent citations: 1994 SCC, Supl. (2) 278 JT 1994 (3) 449

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

ALAPATI V.S. MURTHY

Vs.

RESPONDENT:

STATE OF A.P.

DATE OF JUDGMENT 28/04/1994

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

YOGESHWAR DAYAL (J)

CITATION:

1994 SCC Supl. (2) 278 JT 1994 (3) 449

1994 SCALE (2) 715

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- The village of Mundur in Eluru Taluk of West Godavari District was faction-ridden. There were several clashes between the parties resulting in cases and counter-cases and security proceedings also were launched against both the parties. Two Constables including PW 19 were posted in the village to maintain law and order who came to the village in the morning of 9-4-1977. On 10-4-1977 at about 6 p.m. a rioting took place in the course of which one Ramineedu (hereinafter referred to as the "deceased") received fatal injuries and one Veera Venkaiah Chowdary, PW 6 also received serious injuries. In respect of this occurrence 16 persons including A-1, the leader were tried for offences punishable under Sections 120-B read with 302, 148, 302/149 and 326/149 IPC. The trial court acquitted original accused 9 and II to 16 of all the charges and also acquitted original accused 1 and 2 of conspiracy charge but convicted original accused 1 to 8 and 10 for the other offences and sentenced them accordingly. On appeal preferred by them, a Division Bench of the High Court acquitted original accused 7 and confirmed + From the Judgment and Order dated 4-2-1980 of the Andhra Pradesh

High Court in Crl. A. No. 1065 of 1978 the convictions and the sentences of A-1 to A-6, A-8 and A-10 who have filed the present appeal.

2. The prosecution case is as follows. A-1 Alapati Venkata Satyanarayana Murthy was the Sarpanch of the village and he was leader of one faction. The opposite faction was led by one Vishnumurthy. A-1 to A-6 and A-14 are closely related to each other. A-7 to A-13, A-15 and A-16 are Harijans related to each other and are followers of A-1. The deceased, his father PW 1, PWs 2, 6 and 8 and others were members of the faction led by Vishnumurthy. On 10-4-1977 the deceased and PWs 1 and 2 went to the field of PW 1 at about 4.30 p.m. After attending to the sugarcane crop they were returning to the village at about 6 p.m. along the road. On the way they found PWs 4, 5 and others of Sitharamapuram Village sitting on the culvert by the side of the road. While they were proceeding on the road, PW 5 requested PW 2 to lend his starter for supplying water and PW 2 replied that he would look to the matter later. While the deceased and PWs 1 and 2 proceeded further and covered a distance of 200 yards, they found PW 3 coming in the opposite direction on his cart loaded with hay. When the deceased was nearing the cart, all the accused suddenly came from behind the hay-loaded cart armed with karra kathulu (knife fixed to a stick). On the exhortation of A-1, A-2 struck the deceased on the left upper arm with the karra kathulu in his hand. The deceased fell down and thereupon all the accused indiscriminately stabbed the deceased with the karra kathulu in their hands. PWs 1 and 2 ran towards the culvert calling for the help of PWs 4 and 5 who came to the scene running. PW 4 identified A-1 to A-3 amongst the persons who were running away. They found the deceased lying in a pool of blood. PW 4 took out a towel and bandaged the wounds to prevent further bleeding. Immediately PW 1 went to his field and brought a cart and took the injured deceased to the hospital at Mundur in that cart.

3. According to the prosecution, after stabbing the deceased the 16 accused were going into the village and when they were at a distance of about one furlong from Harijanwada, they saw PW 6 who was going to his field. A-1 instigated and A-2 to A-6, A-8 and A-10 attacked PW 6 on various parts of his body. PW 6 lost consciousness. Thereafter the accused left the place. PW 7 who was returning from his fields, found PW 6 lying unconscious and took him in his cart to hospital at Mundur. The Rural Medical Officer, PW 9 gave first-aid to the deceased and PW 6 and advised them that they should be taken to the Headquarters' hospital at Eluru. Securing two taxi cars, PW 1 and others took the deceased and PW 6 to the Headquarters' hospital at Eluru. The doctor, PW 14 who was in charge of the casualty ward admitted them at about 10.05 p.m. As the injuries on both of them were serious PW 14 sent intimation to the police for recording dying declarations. Before the police and the Magistrate could arrive the deceased succumbed to his injuries at about 10.45 p.m. PW 13, the Special Judicial Magistrate, however, reached the Hospital at about 1 a.m. and recorded the statement of PW 6 marked as Ex. P-14 as dying declaration. PW 20, ASI came to the hospital, obtained a copy of Ex. P-14, went to the police station and registered a case. PW 19, the Bandobust Constable in the village gave a telephonic message to the Sub-Inspector, PW 21 who made an entry in the general diary and immediately left for Mundur. He recorded a statement Ex. P-1 from PW 1 and sent the same to the police station for registering the case. The case was duly registered and the FIR was issued. The inquest was held over the dead body and the same was sent for postmortem. Dr Krishna Prasad, PW 15, who conducted the postmortem, found as many as 15 incised wounds, two contusions and one abrasion. On internal examination he found a number of fractures of legs and

hands. On further internal examination he also found fracture of the ribs and subdural haematoma over occipital and parietal region. The doctor opined that the deceased died of shock and haemorrhage due to multiple injuries and injury to the brain. During the investigation, PW 18, a Radiologist took the X-rays of the limbs of PW 6 and found fractures of (1) ulna and radius; (2) both the bones of right forearm; (3) both the bones of right leg; (4) both the bones of the lower ends of the right leg; (5) left fibula; (6) 3rd, 4th and 5th metatarsals and (7) proximal phalanx.

4. PW 21, the Sub-Inspector searched the house of the accused and effected some recoveries in the presence of the mediators. After completion of the investigation, the charge-sheet was laid. The plea of the accused has been one of denial.

5. The prosecution examined 23 witnesses out of which PWs 1 and 2 figured as eyewitnesses. PWs 3, 4 and 5 have been examined to corroborate the evidence of PWs 1 and 2. PW 6 is the other victim of the occurrence and he has deposed about attack on himself.

6. The trial court acquitted A-9 and A-11 to A-16 on the ground that the allegations against them were somewhat omnibus. The learned Sessions Judge, however, held that there was conclusive proof of the participation of A-1 to A-8 and A-10 in the attack on the deceased and of the participation of A-1 to A-6, A-8 and A-10 in the attack on PW 6 and convicted them accordingly. The High Court acquitted A-7 holding that there is no corroboration of the evidence of PWs 1 and 2 regarding his participation and gave benefit of doubt to him and confirmed the convictions of the appellants as stated above.

7. The learned counsel for the appellants submitted before us that all the witnesses are highly interested and they have implicated almost all the members of the family of A-1 and that PW 6, though injured, his evidence cannot be used for corroborating the evidence of PWs 1 and 2 regarding the attack on the deceased inasmuch as PW 6 has not witnessed the attack on the deceased and that the two incidents namely the attack on the deceased and attack on PW 6 do not form part of the same transaction.

8. A perusal of the High Court judgment shows that the High Court relied on the evidence of PWs 1 and 2 to the extent corroborated by PW 6, the injured witness. The High Court held that the attack on the deceased and PW 6 formed the same transaction and when the two incidents involving the accused were tried together no objection was taken. The High Court also pointed out that the proximity of time and community of purpose and design revealed by the case would show that the two incidents formed one transaction. The evidence on record establishes that the members of the unlawful assembly who attacked the deceased on the road proceeded further and on the way again some of them attacked PW 6 also causing serious injuries. The injured deceased and PW 6 were immediately taken to the hospital and thereafter they were shifted to the Headquarters' hospital. These circumstances would go to show that the two incidents formed one transaction. Though PW 6 has not witnessed the attack on the deceased, his evidence can be accepted to the extent namely that those assailants who attacked him must have participated in the attack on the deceased also and he being an injured witness his evidence to that extent can be accepted as amply corroborating the evidence of PWs 1 and 2 against those assailants as having participated in both the incidents.

9. Learned counsel for the appellants, however, submitted that in Ex. P-14, the statement of PW 6 recorded by PW 13, the Magistrate as a dying declaration, PW 6 has not mentioned about the presence of A-1, therefore it stands to reason to infer that PW 6 must have fallen in line with PWs 1 and 2 in implicating A-1 also and at any rate it is highly unsafe to accept the evidence of PW 6 under these circumstances as corroborating the evidence of PWs 1 and 2 in respect of the presence of A-1 as a member of the unlawful assembly.

10. Admittedly PWs 1 and 2 are highly interested witnesses and they are not injured. PW 1 has given Ex. P-1, a lengthy report, implicating as many as 16 accused. Both the courts below have rightly held that corroboration of such evidence is necessary. Though PW 4 no doubt says that he saw A-1 also in the group but PW 6, being an injured witness, his evidence is entitled to greater weight. He no doubt in his present deposition in the court stated that A-1 exhorted and A-2 to A-6, A-8 and A-10 attacked him. If A-1, the leader, was really present and exhorted, PW 6 would not have failed to mention the same in Ex. P-14, his statement recorded by the Magistrate. The learned Judges of the High Court have also noted that in Ex. P-14, PW 6 has not mentioned the presence of A-1 but explained away by saying that PW 6 must have been in severe pain and he was just answering the questions put to him as to who caused injuries. But, according to PW 6, it was only on exhortation of A-1 that A-2 to A-6, A-8 and A-10 caused injuries to him. If that had been so, he would not have failed to mention the same in Ex. P-14 since A-1 was the leader. Even in the evidence of PWs 1 and 2 the only part attributed to A-1 is that he exhorted the other accused and then there is omnibus allegation that all the accused surrounded and attacked the deceased. Under these circumstances and for the reason that PW 6 did not mention about the presence of A-1 in Ex. P-14, it has to be held that there is no corroboration to the evidence of PWs 1 and 2 regarding the presence of A-1 and the part played by him.

11. The learned counsel for the appellants submitted that PW 6 also is an interested witness and though he is injured, his evidence cannot be accepted. We see no force in this submission. A perusal of Ex. P- 14 shows that he did not mention the name of A-1 who was the leader. This itself shows that PW 6 gave the true version when he stated that A- 2 to A-6, A-8 and A-10 attacked him. To that extent we agree with the High Court that Ex. P-14 is an unvarnished true account of the occurrence as elicited by the Magistrate by specific questions and not a result of any deliberation or desire on the part of PW 6 to make statement with a view to implicate any of his enemies. Taking the evidence of PWs 1 and 2 to the extent corroborated by PW 6, it can safely be concluded that the prosecution has established its case as against A-2 to A-6, A-8 and A- IO only.

12. Accordingly the convictions and sentences awarded as against A-1, Alapati Venkata Satyanarayana Murthy are set aside and he is acquitted of all the charges. The convictions and sentences awarded against the remaining accused namely A-2 to A-6, A-8 and A-10 are confirmed. In the result the appeal is allowed so far as A-1 is concerned and dismissed so far as A-2 to A-6, A-8 and A- IO are concerned.