Supreme Court of India
Kaki Ramesh vs State Of A.P on 29 April, 1994
Equivalent citations: 1994 SCC (4) 397, JT 1994 (3) 532
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
KAKI RAMESH

Vs.

RESPONDENT:
STATE OF A.P.

DATE OF JUDGMENT29/04/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
SAHAI, R.M. (J)

CITATION:
1994 SCC (4) 397 JT 1994 (3) 532
1994 SCALE (2)753

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.L. HANSARIA, J.- In these two appeals the six appellants have challenged the judgment of the High Court of Andhra Pradesh by which the conviction as awarded on them by the Additional Sessions Judge, Krishna Division, Vijayawada was upheld. Of the six appellants, three in Criminal Appeal No. 484 of 1982, who are Kaki Ramesh, Dadimadugula Pedda Baburao and Dadimadugula Chinna Baburao, have come to be convicted under Section 302 of the Penal Code; the remaining three, namely, Senagasetti Subba Rao; Paladugu Veerayya and Senagasetti Durga Prasad, who are the appellants in Criminal Appeal No. 485 of 1982, have been found guilty under Sections 302/149.

2.The prosecution case which need be noticed for the disposal of the appeals is that the six appellants along with many others had attacked one Raja Babu on the night of 3-8-1979 while the deceased and his brother PW 1, nephew PW 2 and mother PW 3 were sleeping in their house. The attackers were armed with axes, spears and sticks. On hearing the shouts, PW 1 opened the door

when the members of the unlawful assembly entered forcibly in the house of the deceased and when he was about to get up from his bed, appellant 1 in Criminal Appeal No. 484 of 1982, namely, Kaki, cut him with an axe on his neck and asked others to drag the deceased out. On this being done, he was attacked by two other appellants of this appeal with axes. On seeing this, PWs 1 and 2 ran away to a distance; PW 3 the old mother having fled away a little earlier. After the accused party left, these PWs came back to the place where the deceased was lying in a pool of blood. Town police station Vijayawada was informed about the matter soon thereafter, which set the police in action and after conclusion of the investigation, the six appellants were booked for trial and came to be convicted as aforesaid, which convictions were upheld by the High Court on appeals being preferred.

3.Shri Natarajan, learned Senior Advocate, who has addressed principally on behalf of the appellants has raised four submissions to persuade us that the conviction of the appellants was not warranted by law. These contentions are that there being no clinching matter on record about any lamp being inside the room where the first assault on deceased was made, the identity of the assailants is a matter of doubt. Secondly no blood having been found inside the room, the occurrence had not taken place in the manner urged by the prosecution. It is then submitted there being no abrasion on the back of the deceased, the story of his having been dragged out is doubtful. The final submission is that the room being small, all the members of the unlawful assembly could not have entered the same, as is the prosecution case.

4.Let us deal with these submissions in seriatim : Insofar as absence of lamp is concerned, it may be pointed out that this was not the contention raised on behalf of the appellants either before the trial court or the High Court. This might have been because of the fact that among others PW 1 had clearly stated in his evidence that he had seen the accused with the help of light in their house. Shri Natarajan contends that this PW had not stated about the lamp to the Investigating Officer, nor had this fact been mentioned in the FIR. We do not think if in the FIR this was required to be done or, for that matter, the PW was required to state about it to the Investigating Officer (10), nor was the 10 required to ask about it. This for the reason that the assault having taken place inside the sleeping room, it can be well presumed it had a lamp, may be half-burning. Had the occurrence taken place on a dark night either in a jungle or on roadside not having street light, the question of existence of sufficient light to identify the culprits would have been a relevant question.

5.Insofar as absence of blood inside the room is concerned, we would state that blood having been found on the pillow (MO 4) and on the blanket (MO 3), the case of prosecution that the first assault was inside the room stands fully corroborated. These two materials had been found inside the room and the axe-blow being on the neck it was but natural to find the blood on the pillow; it may be because of this that the blood did not get spilled on the floor, because the deceased had been dragged out immediately from inside the room.

6.As to the absence of abrasion at the back, we do not place much importance inasmuch as even in the FIR the fact of dragging had been clearly mentioned. This apart, the deceased having had as many as 21 wounds on his body, all of whom were 'Incised, the little abrasion might have missed the autopsy surgeon.

7.The last submission of Shri Natarajan is adequately met by stating that what PWs stated in this regard has to be taken as exaggeration. It is well established that exaggerations, embellishments and inconsistencies on the fringe do not make witnesses unreliable.

8.The aforesaid submissions had been advanced by Shri Natarajan relating to Criminal Appeal No. 484 of 1982, which is against the conviction of the three appellants under Section 302. As to the appellants in Criminal Appeal No. 485 of 1982, the additional submission is that insofar as appellant 1 is concerned no overt act was attributed and appellants 2 and 3 were named for the first time in the court that they had dragged the deceased from inside the room.

9.Both these submissions have no cutting edge. This is for the reason that for fastening of liability with the aid of Section 149 of the Penal Code, commission of overt act is not necessary. This proposition in law is well settled. Even so, we would refer to the decision of this Court in Sherey v. State of U.P.1 in which on the facts of that case this Court desired evidence of overt act to satisfy its mind about the involvement of appellants before it. The perusal of that judgment shows that this was felt necessary because the court was concerned with as many as 25 appellants who had been convicted under Section 302 with the aid of Section

149. The genesis of the occurrence was a dispute between Hindus and Muslims relating to a place which the Hindus claimed as a cremation ground; whereas according to the Muslims, the same was their graveyard. On a Hindu dying his dead body was carried to the aforesaid place when the 25 appellants along with another came armed with lathis and assault took place. It was observed that in such a case to assure the mind of the court about presence of the person concerned as a member of unlawful assembly, attribution of overt act 'is necessary. We do not read decision in Sherey1 to have laid down that in every case under Section 149 overt act has to be established.

10.The six persons named in the FIR of the present case included this appellant. Though Shri Natarajan has submitted that lodging of the FIR even within 1 and 1/2 hours of the occurrence should be regarded as delayed action inasmuch as police station was not far, we do not think if we would be at all be justified in accepting this submission because after the gruesome murder had taken place, the family members must have taken sometime even to reconcile as to what had happened.

11.As regards the two other appellants, we would observe the mere fact that only in the course of trial they had been named as those who had dragged the deceased out from inside the room, cannot create reasonable 1 1991 Supp (2) SCC 437 : 1991 SCC (Cri) 1059 401 doubt about these appellants having really done so on the face of clear statement in the FIR about dragging the deceased and naming of these two appellants also in the FIR as members of the unlawful assembly; who in particular had dragged the deceased was not required to be stated in the FIR.

12. Nothing further remains to be stated. Indeed, nothing more could have been urged, because the facts are tell-tale; apparent, inter alia, from the fact that the incised wound on the neck measured 5" x 3" x 2" telling about the force and venom with which it was struck. The fact that accused-party and the complainant-party belonged to different factions in the village might have provided motive for

the crime, instead of false implication as sought to be urged by Shri Natarajan. It may be pointed out that the appellant Kaki was the leader of his faction and the five other appellants were his associates.

13. In view of the above, we find no cogent reason to disturb the conviction as awarded on the six appellants. The sentence imposed being imprisonment for life on each is the minimum visualised by Section 302. Both the appeals therefore, stand dismissed. All the appellants are on bail. Their bail bonds are cancelled. They will surrender to serve out the remaining period of imprisonment as would be required by each of the appellants.