

MULLAGIRI VAJRAM AND ORS.

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v.

STATE OF ANDHRA PRADESH

OCTOBER 15, 1992

[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

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Criminal Law :

Indian Penal Code, 1860 :

Sections 149 and 302—Murder—Conviction of the accused—Confirmation of by High Court—Whether valid—Identification of accused—Reliance placed on evidence of eye-witness of—Whether proper—Name of one of the accused not mentioned in Statements recorded either under Section 164 Cr. P.C. or at the inquest—Whether accused entitled to benefit of doubt.

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Twelve persons, including the appellants, were challaned for the murder of Sarpanch of a village. Relying on the evidence of P.Ws. 1, 2 and 7 *in toto* and that of P.W.3 to some extent, the Sessions Judge convicted all the accused persons for the offences under Section 302 read with Section 149 I.P.C. and awarded sentence of imprisonment for life and other minor terms of imprisonment for other offences.

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On appeal, the High Court set aside the conviction and sentence of seven accused persons, namely, A-4, A-5, A-8 to 12 and confirmed the conviction of the remaining five accused persons, A-1 to A-3, A-6 and A-7 under Section 302 read with Section 149 I.P.C. and sentenced them to imprisonment for life.

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These five accused filed an appeal, by special leave, before this Court. During the pendency of the appeal one of the accused-appellants died and as such appeal filed by him was dismissed as having abated.

On behalf of the accused persons it was submitted that even if the statement of P.W.2 was taken to be correct no offence was made out so far as accused A-3 was concerned, inasmuch as P.W.2 had admitted in the cross-examination that he did not state the name of A-3 in his statement recorded under Section 164 Cr. P.C., and that the name of A-3 was also not found in Exhibit D-7, the statement of P.W.2 recorded at the inquest, and that since

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- A** P.W.2 had gone to police station seven or eight times after the incident, there was a possibility of his seeing the accused, A-2 and A-7 in the police lock-up and hence the identification parades held had no value.

Disposing of the appeal, this Court,

- B** **HELD: 1.1.** There is no infirmity at all in the reasoning and conclusions arrived at by the High Court so far as accused A-1, A-2 and A-7 are concerned. [24-B]

- C** 1.2. It is established beyond any manner of doubt that there were two factions and long standing rivalry in between the two groups in the village. The accused persons belonged to the group headed by A-6, A-7 and the deceased was the leader of the other group. The deceased was given merciless beatings and was done to death in the midnight. He was found to have 26 external injuries as recorded in the autopsy of his dead body conducted by the Doctor. It has also been found established by the trial court as well as by the High Court that A-1 inflicted injuries by an axe and A-2 by a spear and A-7 was among the other persons who inflicted injuries by a stick. It has also come in the evidence of P.W. 19, Inspector of Police, that the accused persons had absconded and after a few days of the incident, on information, he, along with mediators, visited the village and the absconded accused were hiding in the house of A-7. He surrounded the house with his staff, guarded it and found therein, the twelve persons against whom the case was challaned. It has also been proved by the prosecution that A-7 was the leader of the rival faction against the deceased. [23-F-H, 24-A]

- F** 1.3. The High Court has considered the prosecution evidence in detail and has placed reliance on the statements of P.Ws.1 to 4 as eye-witnesses of the incident. The High Court has placed implicit reliance on the testimony of P.W.2, a clerk in the deceased's office, and who had accompanied the deceased in an autorickshaw and seen the incident. There is no infirmity in the statement of P.W.2 and the High Court has rightly placed reliance on his evidence. [22-D, E]

- H** 1.4. P.W.2 himself admitted at the time of holding the identification parade that he had prior acquaintance with A-2 and A-7. P.W.2 is a witness of sterling worth and both the trial court and the High Court have placed reliance on his testimony. He had identified A-1, A-2 and A-7 in the

Court. Their conviction is not based on the identification parade but on the statement of P.W.1 and P.W.2 made during the trial as eye-witness. A

[23-E]

1.5. A perusal of the statement of P.W.2 shows that he did not make a mention of the name of A-3 in his statement recorded under Section 164 Cr. P.C. and also in his statement, Exhibit D-7, recorded at the inquest. In the circumstances, the accused A-3 is also entitled to the benefit of doubt. [22-G] B

1.6. In the result, A-3 is acquitted of all the charges levelled against him, and the conviction and sentence of the other appellants, A-1, A-2 and A-7 are confirmed. [24-C] C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 483 of 1980.

From the Judgment and Order dated 6.11.79 of the Andhra Pradesh High Court in Crl. A. No. 789 of 1979. D

T.V.S.R. Krishna Sastry, Vishnu Mathur and V.B. Saharya, Amicus curiae (NP) for the Appellants.

G. Prabhakar for the Respondent.

The Judgment of the Court was delivered by E

KASLIWAL, J. Twelve persons were challaned for the murder of Nethala Veeraswamy, a resident and Sarpanch of village Ramaraogudem in Eluru Taluq, West Godavari District (A.P.) in the night of 31.12.1977. Learned Sessions Judge, West Godavari Division, Eluru tried the case and relying on the evidence of P.Ws. 1, 2 and 7 *in toto* and the evidence of P.W.3 to some extent convicted all the accused persons for the offences charged under Section 302 read with Section 149 I.P.C. and awarded each one of them sentence of imprisonment for life and other minor terms of imprisonment for other offences. On appeal the High Court set aside the conviction and sentence of seven accused persons, namely, Dasari Bhas-kara Rao (A-4), Kali China Krishna (A-5), Namburi Lakshmana (A-8), Namburi Ramulu (A-9), Namburi Prasada Rao (A-10), Mada Govardhana Rao (A-11) and Kali Kamaka Rao (A-12). The High Court confirmed the conviction of the remaining five accused persons Mullagiri Vajram (A-1), Mullagiri Yasupadam (A- 2), Dasari Bhima Rao (A-3), Mada Lakshman- F G H

A das (A-6) and Gandhi Abraham (A-7) under Section 302 read with Section 149 I.P.C. and sentenced them to imprisonment for life. The High Court further held that as these accused had been sentenced for the main offence under Section 302 read with Section 149 I.P.C. there was no need of separate sentence under Sections 148 and 147 I.P.C.

B The five accused A-1, A-2, A-3, A-6 & A-7 have come before this Court in appeal against the order of the High Court by grant of Special Leave. Mada Lakshmandas (A-6) expired during the pendency of appeal before this Court as such the appeal filed by him was dismissed as having abated by order dated 8.4.1992. We are now concerned in this appeal with
C the four accused appellants A-1, A- 2, A-3 and A-7.

We have gone through the Judgment of the lower courts and have perused the record and have considered the arguments advanced by learned counsel for the parties. The High Court has considered the prosecution evidence in detail and has placed reliance on the statements
D of P.Ws.1, 2, 3 and 4 as eye-witnesses of the incident. The High Court has placed implicit reliance on the testimony of P.W.2 and who was a clerk working in the panchayat office of Ramaraogudem and had accompanied the deceased in an autorickshaw and had seen the incident. We find no infirmity in the statement of P.W.2 and the High Court has rightly placed
E reliance on his evidence.

Learned counsel for the accused persons submitted that even if the statement of P.W.2 is taken to be correct, no offence is made out so far as accused (A-3) is concerned. Learned counsel in this regard submitted that P.W.2 in the cross examination has admitted that he did not state the name
F of A-3 in his statement recorded under Section 164 Cr. P.C. It was also submitted that though P.W. 2 stated that he had given the name of A-3 in his statement recorded at the inquest but the name of A-3 does not find mention in exhibit D-7, the statement of P.W.2 recorded at the inquest. We see force in the aforesaid contention. A perusal of the statement of P.W.2
G shows that he did not make a mention of the name of A-3 in his statement recorded under Section 164 Cr. P.C. and also in his statement exhibit D-7 recorded at the inquest. In view of these circumstances the accused A-3 is also entitled to the benefit of doubt.

It was next contended by learned counsel on behalf of the accused
H A-2 and A-7 that P.W.2 in the cross examination admitted that after the

incident he had gone to police station seven or eight times. He had gone to the police station as he was asked by the police. He also admitted that at that time accused persons were in police lock up. On the basis of the aforesaid statement of P.W.2 it was contended that when P.W.2 had gone to the police station seven or eight times after the incident the possibility of his seeing the accused (A-2) and (A-7) in the police station cannot be ruled out. It was thus contended that any identification parade held on 25.1.1978 and 26.1.1978 has no value as P.W.2 had already seen the accused persons in the police station. We find no force in this contention. Exhibits P-16 and P-17 are the proceedings of identification parade held on 25.1.1978 and 26.1.1978 respectively. A perusal of these documents shows that P.W.2 Garapati Krishnavatharam had himself stated that he had prior acquaintance with Mullagiri Yesupadam (A-2) and Gandhi Abraham (A-7). The High Court has examined this aspect of the matter and has rightly arrived to the conclusion that P.W.2 in his evidence has stated that he came to know the names of the accused from the children of the deceased and it was not unnatural for a person, who resides in a village for a period of two months and especially when they reside opposite to the residence of the president (deceased) in whose office he was working as a clerk to know the names of the persons residing nearby. P.W.2 himself admitted at the time of holding the identification parade that he had prior acquaintance with A-2 and A-7. P.W.2 is a witness of sterling worth and both the trial court and the High Court have placed reliance on his testimony. He had identified A-1, A-2 and A-7 in the Court. Their conviction is not based on the identification parade but on the statement of P.W.1 and P.W.2 made during the trial as eye-witness.

It is established beyond any manner of doubt that there were two factions and long standing rivalry in between the two groups in the village. The accused persons belonged to the group headed by A-6, A-7 and the deceased was the leader of the other group. Nethalaveeraswamy the deceased was given merciless beatings and was done to death in the midnight of 31.12.1977. He was found to have 26 external injuries as recorded in the autopsy of his dead body conducted by the Doctor. It has also been found established by the learned trial court as well as by the High Court that A-1 inflicted injuries by an axe and A-2 by a spear and A-7 was among the other persons who inflicted injuries by a stick. It has also come in the evidence of P.W. 19, Inspector of Police that the accused persons had absconded and on 9.1.1978 on information by 5.00 A.M., he along with

- A** mediators visited Ramaraogudem and the absconded accused were hiding in the house of A-7. He surrounded the house with his staff, guarded the house and in that house he found the twelve persons against whom the case was challaned. It has also been proved by the prosecution that A-7 was the leader of the rival faction against the deceased. Thus we find that there is no infirmity at all in the reasoning and conclusion arrived at by the High Court so far as accused A-1, A-2 and A-7 are concerned.
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- In the result we allow the appeal so far as Dasari Bhima Rao (A- 3) is concerned and he is acquitted of all the charged levelled against him his bail bonds shall stand discharged. The appeal filed by Mullagiri Vajram (A-1), Mullagiri Yesupadam (A-2) and Gandhi Abraham (A-7) is dismissed. They shall surrender to their bail bonds and serve out the sentence awarded to them by the High Court.
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N.P.V.

Appeal disposed of.