

In Re: K. Papaiah and ors.

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Court : Andhra Pradesh

Decided On : Feb-08-1956

Reported in : 1956CriLJ1279

Judge : Chandra Reddy and ;Umamaheswaram, JJ.

Appellant : In Re: K. Papaiah and ors.

Judgement :

Umamaheswaram, J.

1. These two appeals are directed against the judgments of the Sessions Judge and the Assistant Sessions Judge, Krishna in Sessions Case Nos. 41 of 54 and 6 of 1955 respectively. Accused 1 to 7 are the appellants in Criminal Appeal 51 of 55 and accused 1 and 4 are appellants in Criminal Appeal 149 of 55. The appellants in Criminal Appeal 51 of 55 and one S. Venkayva, accused 8 in S. C. 6 of 55 were jointly committed for offences under Sections 148, 302, 436 and 201, I.P.C. before the Sessions Judge, Krishna.

But the Sessions Judge, Krishna separated the case against all the accused under Sections 436 and 201, I.P.C. from the case against accused 1 to 7 under Sections 148 and 302, I.P.C. as mentioned in paragraph 3 of the judgment and following the decision of the Full Bench of the Madras High Court in - 'Narayana Bhatta v. King' 1948 Mad WN Cr 113 : AIR 1949 Mad 9 (A). The case which was so separated was tried by the Sessions Judge as S. C. No. 6 of 55.

2. We shall proceed to deal with Criminal Appeal 51 of 55 in the first instance. The first charge against all the seven accused was that on or about the 4th day of April 1954, they formed into an unlawful assembly at 11 a.m. in the village of Hanumanthapuram (also known as Gaddipadu) Gannavaram Taluk, Krishna District, with the common object of such assembly, commit an offence of rioting armed with deadly weapons, viz., spears and tapper's knife and thereby committed an offence under Section 148, I.P.C.

The second charge was that at the same time and place and in the course of the same transaction as set out in charge No. 1 and, in furtherance of the common object aforesaid they did commit murder by intentionally and knowingly causing the death of Kagitha Ramayya of the same village by stabbing him with spears and cutting him with tapper's knife and thereby committed an offence punishable under Section 302, I.P.C.

The learned Sessions Judge found that all the accused were guilty of an offence under Section 148, I.P.C. He further found that accused 3, 5 and 6 were guilty of the offence punishable under Section 302, I.P.C. while accused 1, 2, 4 and 7 were guilty of an offence under Section 326, I.P.C. He convicted and sentenced all the accused under Section 148, I.P.C. to undergo rigorous imprisonment for two years. So far as accused 3, 5 and 6 were concerned, he sentenced them to transportation for life. Under Section 326, I.P.C. he convicted and sentenced accused 1, 2, 4 and 7 to undergo rigorous imprisonment for three years. He directed that all the sentences should run concurrently. The accused have consequently filed the appeal.

3. In the village of Hanumanthapuram there lived three brothers Kagitha Adayya, Kannayya and Vallayya. The deceased Ramayya was the son of Adeyya. The 1st accused is the son of Kannayya, The 2nd accused is the son of the 1st accused. Accused 3 to 6 are the sons of Vallayya. The 7th accused is the grandson of a cousin of those three brothers and Sonti Venkayya, the 8th accused in S. C No. 6/55 is the daughter's son of another cousin of those three brothers.

4. The case of the prosecution as spoken to by the widow of the deceased Ramayya is briefly as follows: There were ill-feelings between the deceased

Ramayya and the 1st accused to three years prior to the date of occurrence and they were not on visiting or talking terms. A month prior to the occurrence, the fence between the house of the deceased and the accused fell down.

On 4-4-1954 at about 10 or 11 a.m. the deceased Ramayya and his son, examined as P. W. 2 were digging pits with a crowbar to erect the fence. All the accused obstructed them from putting up the fence and quarrels started between them, P. Ws. 7 and 8 advised them not to quarrel and left the place after giving the advice. P. Ws. 5 and 6 came on the scene when the quarrels went on. At that time, the 6th accused said that they should each bring a spear and stab Ramayya. All of them went inside the house of the 1st accused.

The 1st accused brought a tapper's knife and accused two to seven a spear each. The 5th accused pierced the spear in the abdomen of Ramayya who was still standing near the fence and the intestines came out. Accused 3 and 6 then speared Ramayya on his back. The 1st accused cut him on the neck with the tapper's knife while the 4th accused speared him on his head Accused 2 and 7 speared him indiscriminately on the head, chest and legs. The result was that Ramayya died immediately. At that time, S. Venkayya came there and asked the accused to set fire to the house of Ramayya and burn the corpse.

The 1st accused threw the rubbish and red-green twigs on the corpse and set fire to it. The 4th accused set fire to Ramayya's house by a match stick. The head of the corpse was charred and the clothes were burnt away. The son took fright and ran away. The widow, her daughter Rushulu and her daughter-in-law Venkataratnam, however, remained on the spot.

When the village munsif examined as P. W. 11, came to the scene of occurrence, all the accused ran away. The widow gave a report to the village munsif which is marked as Ex, P. 1. The village munsif sent reports to the Police at Vuyyur and to the Magistrate at Gannavaram by a cycle messenger. The Police Sub Inspector came in the evening at about 5-30 p.m. and held an inquest at about 7 o'clock. The Circle Inspector continued the investigation on the next day. The charge-sheet was filed on 20-4-54 and the accused were arrested on 4-5-1954.

5. The main question that arises for determination in the appeal is as to whether the prosecution case, as spoken to by the eye-witnesses, P. Ws. 1 to 6 is true and whether all or any of the accused are guilty of the offences under Sections 148 and 302, I.P.C. We shall at first refer to a few relevant facts and circumstances which lead us to the conclusion that the prosecution case as spoken to by the eye-witnesses, cannot be true and their evidence cannot be relied on to base any conviction.

The case of the prosecution is that the incident took place on the New Year's day at about midday. It is admitted that within 20 yards of the scene of occurrence, there were several houses occupied by madigas. It is also in the evidence of P. W. 1 that there are a number of houses belonging to Gowdas close-by. The widow stated in the Committal Court, marked as Ex. D-1 that at the time of the incident there were many others apart from the members of her family, viz., her son, daughter and daughter-in-law. P. Ws. 5 and 6 stated that they were standing near the place of occurrence watching the fighting between the parties.

According to the case of the prosecution, there were 6 persons, P. Ws. 1 to 6 who were interested in defending Ramayya. Would they have kept quiet without moving their little finger to help him and would they not have at least cried out for help, especially when there were a number of madigas living close-by? The story that they were all present and were watching the incident like silent spectators while Ramayya was being speared to death is wholly unbelievable and opposed to human conduct, and leads us to the only conclusion that they were not present at the time.

6. All the eye-witnesses speak to the fact that the 6th accused said that they should each bring a spear and stab Ramayya. Is it likely that, when the 6th accused so announced his intention openly to stab Ramayya, he would stand near the fence waiting for the aggressors to attack him and not run away from the place? In the normal course one would expect him and the members of his family to go inside their house and arm themselves similarly or shout for help; or he would have run away from the spot and sought shelter in the houses of madigas close-by.

Moreover, if Ramayya and his son were attempting to erect the fence in spite of the protests of the accused is it likely that Ramayya alone would have been attacked and the son allowed to go scot free? Admittedly, no injury whatsoever was caused to the son or the other members of the family who were watching the stabbing incident.

7. It is surprising that even though there were many others witnessing the incident, as admitted by P. W. 1 before the committing Magistrate, not one of them was examined in support of the prosecution story. The Only eye-witnesses examined in support of the prosecution story are the members of the deceased Ramayya's family, viz., the widow, the son, the daughter and the daughter-in-law and 2 persons inimically disposed towards the accused.

It is admitted by P. W. 5 that S. Venkayya, the 8th accused in Sessions Case No. 6 of 55 and his father were enemies since 3 years. His father, Subbayya, had purchased a land from N. Narasimha Rao and he was obstructed from obtaining possession by Venkayya, the 7th accused and his cousin. Balaramayya. A criminal complaint was filed by Venkayya against P. W. 5, his father Subbayya the village munsif, P. W. 11 and P. Ws. 6 and 7 before the Stationary Sub Magistrate, Gannavaram. The uncle of P. W. 5 had also filed a complaint against accused 2, 3, 6, 7 and Venkayya.

It is also admitted that in 1953, Subbayya had filed a petition under Section 144, Cr. P.C. against Venkayya, 7th accused and others. There were also civil proceedings between 7th accused, Balaramayya, Venkayya and Subbaya. P. W. 6 also admits that a case was filed by Venkayya, the 8th accused against P. W. 5, the village munsif and P, W. 7. It is clear from these admissions that there was enmity between 7th accused and Venkayya on the one hand and P. Ws. 5 to 7 and Subbayya on the other.

The evidence of P. Ws. 1 to 4 is also to the effect that there was enmity between them and the accused. As there is no independent evidence apart from the evidence of P. Ws. 1 to 6 it is necessary to scrutinise very carefully whether they are speaking the truth.

8. It is admitted that by the time the village munsif came to the scene of occurrence, Subbayya was already present. The Sub Inspector, P. W. 15 came to the village at about 4-30 p.m. or 5 p.m. He held an inquest at about 7 p.m. In the inquest report Ex. P-8 there is a very material interpolation in column XI-A which if translated runs as follows:

Kagitha Narayana, Kagitha Venkataratnam and Murala Rushulu stated in the above manner.

9. The village munsif admitted in his deposition that he wrote Ex. P-8 that the last sentence in column XI-A appeared to be an interpolation and that he could not say when it was added. From the interpolation in Ex. P-8 there can be no doubt that P. Ws. 2 to 4 were not examined at the time of the inquest and that they did not speak to the incident.

10. The learned advocate for the appellants Sri P. S. T. Sayee laid great stress on the fact that the police had suppressed the real case diary and that the accused were seriously prejudiced by not having copies of the several statements recorded by the police officers under Section 162, Cr. P.C. in the said diary. The Sub Inspector stated that he examined P.Ws. 1 to 4 before the inquest and during the inquest. He further stated that he examined P.Ws. 5 to 7 and 11 on the same night.

The Circle Inspector examined as P.W. 16 deposed that he examined P.Ws. 1 to 8 and 11 on the next day i.e. 5-4-1954. P.W. 1 deposed that she was examined before the police twice and that she affixed her thumb mark to those statements. P.W. 2 stated that he was examined at the time of the inquest, and again at 8 or 9 p.m. P.W. 3 stated that she was examined, for the first time at the inquest and that her thumb impression was taken by the police. P.W. 4 admitted that she was examined twice i.e. at the time of the inquest and once before. All the statements recorded by the Sub Inspector and the Circle Inspector are not available.

We find that there are only two sets of statements, one set in manuscript purporting to have been recorded by the Sub inspector and the other typewritten set purporting to have been taken down by the Circle Inspector. When we

examined those statements we found a curious feature which leads us to the conclusion that they could not have been the statements recorded at the time when the witnesses were examined, e.g. in recording the evidence of P.W. 2 reference is made to P.Ws. 5, 7 and 9 who were not at all examined by that time.

Reference if at all, must have been made to their names. It is impossible to conceive how reference could be made to the witness by number as P.Ws. 5, 7 and 9 when they were examined only later. The Sub Inspector states that he took notes when he examined P.Ws. 1 to 4 and copied them later in the case diary and tore away the notes. As a result of the perusal of the case diaries produced before us, we are satisfied that they are suspicious and cannot be relied upon as representing the correct statements recorded at the time.

Moreover, no thumb impressions of the witnesses are to be found therein as spoken to by P.Ws 1 and 3. Sir John Beaumont has discussed in *Fulukuri Kotayya v. Emperor* 1947 Mad WN 217 : AIR 1947 PC 67 (B) the scope and effect of the proviso to Section 162, Cr. P.C. and the importance of the statements recorded by the police officers. At p. 219 of Mad. W.N. at p. 69 of AIR are the relevant observations which run as follows:

The right given to an accused person by this section is a very valuable one and often provides important material for cross-examination of the prosecution witnesses. However slender the material for cross-examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistencies in his several statements may not embarrass a truthful witness but may cause an untruthful witness to prevaricate, and may lead to the ultimate breakdown of the whole of his evidence; and in the present case it has to be remembered that the accused's contention was that the prosecution witnesses were false witnesses. Courts in India have always regarded any breach of the proviso to Section 162 as matter of gravity. *Baliram v. Emperor* AIR 1945 Nag 1 (C) where the record of statements made by witnesses had been destroyed, and *Emperor v. Baasidhar* 53 All 458 : AIR 1931 All. 262 (D) where the court has refused to supply to the accused copies of statements made by witnesses to the Police, afford instances in which failure to comply with the provisions of Section 162 have led to the convictions being

quashed. Their Lordships would, however, observe that where, as to those two cases, the statements were never made available to the accused, an inference, which is almost irresistible, arises of prejudice to the accused.

Applying those observations to the instant case, we hold that the accused have been seriously prejudiced by the suppression of the real case diaries and the non-availability of the copies of the statements contained in those diaries to the accused. The case Nary produced before us, as stated supra, does not maintain the actual or real statements recorded by the police officers at the time of the examination of those witnesses. The statements as actually recorded before, at and after the inquest are not before us.

We have also grave doubts as to whether the Circle Inspector went on typewriting the statements as and when the witnesses made the statements.

There is also no adequate explanation as to why the original statements should have been torn off. The accused are therefore denied of a valuable right to cross-examine the prosecution witnesses with the aid of the earliest statements recorded under Section 162, Cr. P.C. and this is sufficient, in the circumstances of the case, to vitiate the entire trial of the case.

11. The further case of the appellants is that no reliance ought to be placed on the statements contained in the first information report Ex. P. 1, According to them, Subbayya, the village munsif, P.W. 11 and the Police must have brought into existence a false report. The village munsif admits that by the time he went to the scene of occurrence, Subbayya was already there. He also admits that he did not note in the reports sent to the police and the Magistrate the time of sending the reports.

It is clear that the report which was sent to the Magistrate by a cycle messenger did not reach him till 11 o'clock on the next day though his court was only 25 miles from Gaddipadu. The Sub Inspector states that he received the report even by 4-30 p.m. and that he immediately came to the village. If so, how is it that the report was not delivered to the Magistrate on the same evening but was delivered at 11 O'clock on the next day, though Gannavaranes only about 18 to 20 miles from

Vuyyuri? There is also evidence that buses run from Veeranki lock to Vuyyur and Gannavaram.

The delay in sending the report to the Magistrate raises considerable doubt on the truth of the statements contained in Exs. P-1, P-6 and P-7. In this connection, it may also be noted that the report is not given by the adult son of Ramayya, P.W. 2 and it is obtained only from the widow, P.W. 1. The reason given for P.W. 2 not giving the first information report is stated to be that he took fright and ran away while the other 3 female members of the family, P.Ws. 1, 3 and 4 remained at the place of occurrence.

We are not prepared to accept that explanation. We are inclined to think that the widow must have been prevailed upon to give a false report implicating all the accused. It is also of interest to note that in Ex. P-1 the only eye-witnesses mentioned are P.Ws. 1 to 4 and not P.Ws. 5 and 6. The mention of P.Ws. 5 and 6 at a later stage must therefore have been an afterthought. The name of the 8th accused, Venkayya, is also not to be found in this report. It is only later that he was sought to be implicated as having abetted the offence of setting fire to Ramayya's house.

The development of the case from stage to stage, the interpolation in Ex. P. 8 by adding the names of P. Ws. 2 to 4, the mention of P. Ws. 5 and 6 as eye witnesses at a subsequent point of time and the foisting of a case against the 8th accused who has been acquitted in Sessions Case No. 6 of 55 confirm us in our conclusion that the prosecution is not putting forward a true case.

12. Having regard to the several inherent improbabilities and suspicious circumstances referred to supra, we are not prepared to accept the oral evidence of the direct witnesses who are inimically disposed towards the accused. As already stated, P.Ws. 1 to 4 are very closely related to the deceased and are not disinterested witnesses. There are discrepancies in their evidence also. P.W. 1 stated that she gave the names of all the eye-witnesses present at the occurrence to the village munsif but in Exs. P. 1, P-6 and P-7 the names of P.Ws. 5 and 6 are not to be found.

In Ex. D-1 she stated that there were several persons present at the time of the occurrence, but she denied that fact in the Sessions Court. In her deposition before the court of stationary Sub-Magistrate, Gannavaram, marked as Ex. D-3, she stated that none else except her daughter-in-law, son and daughter were present. There are similar discrepancies in the evidence of P.Ws. 3 and 4. A number of statements materially different from those made in the committing Magistrate's Court and the statements recorded under Section 164, Cr.P.C. or made in the Sessions Court. Ex.s. D. 4 to D. 9 have been marked to bring out those contradictions.

As already stated, the names of P.Ws. 5 and 6 as the eye-witnesses were not mentioned at the time of the inquest. We are not prepared to place any reliance upon their evidence. P.Ws. 7 and were examined to probabalise the incident. They stated that they were present when there was a quarrel between Ramayya and accused 1 to 7 about the fence.

In the course of the cross examination, P.W. 7 admitted that Venkayya had filed a complaint against him along with the village munsif, Subbayya, and P.Ws. 5 and 6. He also admitted that he was related to P.W. 6. We are therefore not prepared to accept his evidence. P.W. 8 is a Police constable who stated that he witnessed the quarrel between Ramayya and accused one to seven some time before the occurrence. He admitted in the cross examination that there was no need for him to cross the houses of the accused and the deceased to go to Madigagudem.

It was elicited that he was being entrusted with the service of notices on the accused in the petition filed by Subbayya. Though it is in the evidence that he went to that village that day, we are not impressed with his evidence as to his having witnessed the quarrel between them, the deceased and the accused earlier in the day, we find it very difficult to accept the prosecution story that all the accused took part and stabbed Ramayya to death.

Though there is some suspicion in our mind that one or other of the accused might have caused the death of Ramayya we are unable to hold on the state of evidence on record, as to who actually caused the death. The case of the prosecution as spoken to by the eye-witnesses is that all the accused stabbed Ramayya and

caused his death. Having regard to the unsatisfactory nature of the case diary, the interpolation in Ex. P. 8 and the development of the prosecution case, from time to time, we have to give the benefit of doubt and set aside the convictions of all the accused.

It is unfortunate that as a result of the admixture of truth and falsehood, we find it impossible to predicate who is actually guilty and the result is that even the guilty persons go scotfree. We wish to repeat that having regard to the importance of the statements recorded under Section 162, Cr.P.C. the police officers should preserve those statements and not tear off or destroy them. We also wish to state that the typewriting machines in recording the statements under Section 162, Cr.P.C. may be sparingly used.

13. Sri P.S.T. Says contended that the injuries caused were post mortem and not ante-mortem.

The post mortem certificate marked as Ex. P-2 was to the effect that the deceased died of shock and haemorrhage as a result of the injuries caused to lungs, pericardium and intestines. The doctor examined as P.W. 9 deposed to the same effect in the examination in Chief; but in the cross examination, he stated that the shock resulting from the burns might cause death and that he was not quite certain whether the injuries were ante-mortem or post-mortem. He also stated that there was no clotting of blood anywhere.

Relying on his evidence that there was no clotting of blood, the learned advocate sought to contend that the injuries must have been caused postmortem. We find it difficult to accept the contention that after Ramayya sustained burns and died as a result of shock, injuries were inflicted on his body with a view to implicate the accused. It is however unnecessary to deal with the passages referred to in Tailor and Mody on Medical Jurisprudence on this question, as we are of opinion that the prosecution has not satisfactorily established that the accused are guilty of the offences under Sections 148 and 302, I.P.C.

14. The convictions of accused 1 to 4 in S.C. No. 6 of 55 on the file of the Assistant Sessions Court is based on the same set of witnesses and documents

as in S.C. No. 41 of 54 on the file of the Sessions Court, Krishna. As we have not accepted their evidence and set aside the convictions in the connected appeal, we hold that the convictions of appellants 1 and 4 ought not to stand.

15. In the result, the appeals are allowed, the convictions and sentences are set aside and the appellants are directed to be set at liberty.

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