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In Re: Burre Baluga and ors.

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Court : Andhra Pradesh

Decided On : Jun-29-1959

Reported in : AIR1960AP315; 1960CriLJ788

Judge : Manoher Pershad and ;Munikanniah, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 288

Appeal No. : Referred Trial No. 20 of 1959

Appellant : In Re: Burre Baluga and ors.

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : D.M. Deshmukh and ;Gopal Rao Ekbote, Advs.

Judgement :

Manoher Pershad, J.

1. In the village Kodapgal on 12-1-1959 one Satcli Balayya was found murdered. P. W. 4 Baganna informed the police patel about the incident stating that Burre Butugu, Jogi Maisanna, Sakali Eriga and Ramudu were responsible for the murder. The matter was investigated. The said four persons were charge-sheeted under Sections 302 and 302 read with Section 34 I. P. G. for the said murder. The case was committed to the Sessions where on behalf o the prosecution in all 19 witnesses were examined. The accused denied the charges, but did not produce

any defence evidence. On the evidence produced, the learned Sessions Judge found the accused guilty and sentenced each of them to death and has sent the record for confirmation which is before us now. The accused also have filed separate appeal.

2. The case of the prosecution was that the accused armed with axe, sword and lathi attacked the deceased and killed him. The motive alleged for the crime was that there was a dispute between A-1, and the deceased relating to a land. The deceased who was a patwari of the village had the patta made in the name of P. W. 6, which A-1 did not like. There were civil and revenue litigations between them in which the deceased acted as a pairavakar, did the pairavi and bore the expenses. The appeal filed by P. W. 6 before the Revenue Board had been remanded and information of it had been given by P. W. 9 through Exs. P-1 and P-2 and it is also said that the deceased had spoken to P. W. 10 and the Sunday previous to the day of the murder that he succeeded in the appeal in the presence of the other persons.

3. Of the prosecution witnesses examined, P. Ws. 1 and 3, (Lingadu and Balareddy) are the eyewitnesses. P. W. 2 Pratap Karan is the doctor. P. W. 4 Baganna is the elder brother of the deceased. P. W. 5 is Anjawa the wife of the deceased. P. W. 6 Parbhanna is another brother of the deceased and the pattedar of the land in dispute. P. W. 7 Tanoba is the panch of the inquest. P. W. 8 is Gangareddi, who speaks to the fact of having seen the accused after the incident. P. W. 9 Mohd. Ibrahim is a clerk of an advocate. Mr. Azamucldin is said to have written a letter to P. W. 6. P. Ws. 4, 5, 6, 10 and 11 are produced to prove motive. P. W. 12 Naga. identifies A-3 and the axe M. O. 12. P. W. 13 is a fisherman who is said to have taken out the sword from Kunta at the instance of the accused. P. W. 14 is Head Constable (Sajid Ali) who has carried the dead body. P. W. 15, Mohd. Osman is another Police Constable who is alleged to have taken the articles from the court to the Chemical Examiner. P. W. 16 is Sikayya, the panch of the recovery of the articles. P. W. 17 Md. Abdul Waheed conducted the inquest, P. W. 18 Syed Abdul Khader is the police constable who had arrested the accused and P. W. 19 is the P. P. of the Nizamabad District.

4. From the statement of P. W. 2, the doctor, it is clear that the deceased died of shock and haemorrhage due to the injuries on his person. The question that falls for determination is who is responsible for the said injuries. The case of the prosecution is that the said four accused persons are responsible for the murder. Now, we have to see how far the prosecution has succeeded in establishing the guilt of the accused. We would first take up the evidence relating to motive and see whether there was any motive for the accused to commit the murder. The motive as stated earlier is the dispute relating to the land between A-1 and the deceased. A-1's case was that he was the owner and in possession, whereas the deceased's case was that he was cultivating the land as pattedar.

From the documents Exs. P. 3, P. 4 P. 5 P. 6, P. 7, P. 8, P, 9, P. 10, and P. 11, it would appear that litigations both in the civil and revenue Courts were pending between A-1 and the deceased. Ex. P-3 is the judgment in a suit for perpetual injunction and declaration of title of the lands bearing survey Nos. 46 to 85 filed by Parbanna P. W. 6. This suit was dismissed on 31-12-58. The learned Counsel for the accused relying on this order of the court contended that when it has been held on 31-12-58 that P. W. 6 had no right and title to these lands and his suit for injunction was dismissed as he was not in possession, there could not be any motive for A-1 to commit the murder.

It is no doubt true that the Court dismissed the suit on the ground that P. W. 6 had failed to prove his title and possession, but P. W. 6 always asserted his title and possession. From Ex. P. 10 it would appear that the land in dispute was Kharig Khatha land and it was granted in the name or P. W. 6 by the Tehsjldar, Diglur. but this was later cancelled by the Collector on 2-2-1,958 (Ex. P-10). As against this decision of the Collector, P. W. 6 went in appeal to the Board from where the case was remanded. All this would go to show that though on 31-12-58 there was a decision by the Civil Court that Parbhanna (P. W. 6) had no title, still the matter was before the Revenue Court and that was not finally decided and was still pending.

As stated earlier, both parties were alleging title and possession. It may be that A-1 might have felt that in spite of the decree in his favour the matter was becoming

endless and that might have exasperated him. The oral evidence also lends support to this idea. P. W. 4 says that the deceased and A-1 had a dispute relating to the land called 'Barraeyenkal Bhai' that Patta of the land is in the name of P. W. 6, that the deceased had the patta mutated in the name of P. W. 6, that prior to that the patta being in the name of P. W. 6 the land was under cultivation of A-1 and 7 other persons and when this land was taken by him and his brothers, they took up the cultivation and A-1 and others intervened and that there were litigations between the deceased and A-1 and other cultivators. P. W. 5 also says that there was enmity between her husband and A-1 relating to a field, that patta of the land was in their name and the accused wanted to have the same in their name, that litigations were going on about that in Bodhan and Hyderabad and it was in the course of the litigation that her husband did the pairavi and bore the expenses.

P. W. 6 also says that the patta of the and was made in his name and before that was done, the land was under the cultivation of A-1 and 7 others which they cultivated for one year; after the land was transferred in their name, they cultivated and A-1 and others interfered in their cultivation. In cross-examination, he says that the land is nowadays in their possession. P. W. 10 Vithoba speaks to the fact that before the murder, in the evening, at the bus stand he met the deceased and told him in the course of the conversation that the appeal pending in Hyderabad has been decided in his favour.

P. W. 11 says that the patta of the land now stands in the name of Parbhanna (P. W. 6), that the deceased had instituted a case against him and others in the Court of Bodhan and of the 8 defendants, 6 compromised with him and A-1 and Ashiga did not compromise. He says further that there was dispute between the deceased and A-1. In view of these statements and the documents referred to above, we cannot agree with the contention of the learned counsel for the accused that there was no motive so far as A-1 was concerned. Of course, there is force in the contention of the learned counsel for the accused that so far as the other accused were concerned, there is absolutely no evidence to show that they had any motive for the murder.

5. After this, we proceed to consider the other evidence produced on behalf of the prosecution. Of the witnesses produced, P. Ws. 1 and 3 are theeye-witnesses and P. Ws. 4, 5, 6, 7 and 8 are produced to give circumstantial evidence. We would deal with the circumstantial evidence first. P. W. 4 is the informant. He deposes that he was informed of the murder by P. W. 1 while he was in his house and on getting the information he says he went to the place of the occurrence accompanied by the wife of the deceased (P. W. 5) and other persons and saw the dead body lying in the field of Saiga. There were injuries on his neck, head and other parts of the body, he says. Seeing this, he returned to the village and went to the police patel but the police patel was not in the village, He therefore, went to the police station Bichkunda and informed the S. I.

The P. S. I. recorded his statement. The witness identifies Ex. P-13 as his statement. P. W. 5 the wife of the deceased supports the statement of P. W. 4 to this extent that Lingadu P. W. 1 came and informed P. W. 4 that his brother had been murdered and that on hearing the information, they proceeded to the spot and saw the deceased lying injured. P. W. 8 states that on the day of the incident he saw the four accused running hurriedly towards the village at about 9 in the morning. A-4 had a sword in his armpit. A-1 carried an axe, A-3 had an axe and A-2 a stick. He says further that a little after this, he saw P. W. 1 also running towards the village and a number of villagers were seen going along the Diglur road crying. From these statements, it is clear that P. W. 1 came and informed the relatives of the deceased of the murder and that the accused were seen near about the scene of the incident.

After this, we proceed to consider the evidence of P. Ws. 1 and 3, the eye witnesses. P. W. 1 Lingadu deposes in his examination in chief that Sateli Balayya died about 3 months back in the field of Gain Saiga and he was murdered by some persons. He says further that A-1 to A-4 killed him, but he did not see the accused in the act of murdering the deceased. At this stage, P. P., requested the court that the witness has turned hostile and he should be permitted to cross-examine. Permission was accorded. This witness was cross-examined by him as regards his statement before the committing Magistrate's Court and his statement under Section 162 Cr. P. C. and in answer to the questions by the P. P. this

witness has stated that he gave the statement in the Committing Magistrate's Court under fear of the police. His statement before the committing Magistrate's Court was transferred to the record of this case under Section 288 Cr. P. C. In the Committing Magistrate's Court, this witness after identifying the accused has stated that the accused persons had beaten Balayya to death in the field of Gain Saiga.

He says further that at that time he was in the field as he cultivated that field of the deceased Baliah that year and that Baliah, the deceased had been to Anjani village and had returned and when he and the deceased were proceeding by the public road to Diglur and when they had reacheed the Molugoni Moori (a culvert) these four accused came there from the side of the village Kodapagal that A-3 Chakali Era abused the deceased in a filthy language saying that 'I will have sexual intercourse with your wife''. Hearing that the deceased ran away leaving the road towards the field of Ganji Sayiga that these four accused persons chased Chakali Era and, caught the deceased and pushed him down on the ground that A-1 Burri Baliga gave the first stroke with an axe on the neck of the deceased that Chakali Era had one axe, Ramudu had one sword and Maisadu had a stick and all the four beat the deceased each giving 3 to 4 strokes and that thereafter, the accused ran, towards the hilly region which is in the direction of Deglur.

He goes on further and says that after this ho came to the village and informed the matter to P. W. 1, the elder brother of the deceased. He also says that at that time Reddy Balayya also was present and had witnessed the incident. P. W. 3 deposes that on the day of the murder, while ho was going to the well he saw the dead body of the deceased lying in the field of Saiga at a distance of about 20-30 steps from the road. After this statement of the witness the Public Prosecutor stated to the Court that the witness has turned hostile and requested the court to permit him to cross-examine him. He was accordingly cross-examined both as regards his statement before the police under Section 162 Cr. P. C. and the statement before the committing Magistrate's Court. In answer to this question, the witness stated that he made the statements in the Committing Magistrate's Court in a state of fear and illness.

His statement recorded before the committing Magistrate's court was also made part of the record under Section 288 Cr. P. C. by the learned sessions Judge. In the committing Magistrate's Court, where he was examined as P. W. 2, he says after identifying the accused that they had murdered the deceased in the field of Mala Saiga. He saw the incident. He says further that the accused were armed with axe, stick end sword and he saw them coming from the side of the village by the Nizam-sagar road. A-4 abused the deceased by saying: 'I will pollute your wife'. Hearing this, he says that he turned round and saw the deceased going away from the road towards the field of Saiga.

Sakali Etiga (A-3) pursued him and pushed him down on the ground. Then Baluga (A-1) gave a stroke with his axe on the neck and thereafter all the four accused surrounded the deceased and beat him, after which all the accused ran away towards the hilly region. The court below has accepted the version of these two witnesses before the Committing Magistrate to be true and relying on the same has convicted the accused and sentenced them as aforesaid. The learned counsel for the accused relying on Salar Saheb v. State. 1955 Andh LT (Cri) 253, Ghasi Ram v. State, AIR 1952 Bhopal 25, In re Muruga Goundan, ATR 1949 Mad 628, In re Chinna Papiah, AIR 1940 Mad 136, Gopal Khaitan v. The King, AIR 1949 Gal 597 and Amalesh Chandra v. The State, : AIR1952 Cal481 , contended that the learned Sessions Judge has not at all applied his mind to the provisions of Section 288, Cr. P. C. and without being satisfied as to whether the statements of these two witnesses recorded before the committing Magistrate were true and correct has relied1 on them, which he urges, is not proper. He further contended that the learned Sessions Judge in his order of the 18th April, 1958 has not referred to any section of the Code. He also urged that even if those statements recorded before the committing Magistrate's Court are used as substantive evidence, no weight could be attached to those statements as there are discrepancies.

6. In order to appreciate the contention of the learned Counsel, relating to Section 288 Cr. P. C., a reference to the said provision is necessary, which reads thus :

'The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is

produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872'.

7. It would appear from the above provision that a discretion has been given to the Judge but before exercising such a discretion, certain conditions have to be satisfied, namely, that the previous evidence must have been 'duly recorded' in the presence of the accused and the witness should be produced and examined in the Sessions Court. The contention of the learned counsel for the accused is that before the Judge exercises his discretion, he has to Be satisfied that the statements of the witnesses recorded before the committing Magistrate's Court was correct and true. In this connection, the learned counsel even went to the extent of arguing that for that purpose, the Judge has to enter into an enquiry. We are very reluctant to accept this contention of the learned counsel in toto.

There is nothing in the section to hold that the Judge has to be satisfied before exercising his discretion, but there are authorities to that effect. As the power given to him is one in deviation of the general principle that a Court can act only on the evidence given before it, the decision to let in the previous deposition of a witness under this section should be arrived at after careful consideration. The exercise of the discretion therefore, may imply that the Judge has to satisfy himself as to the correctness and truth of the previous statement. It is more a rule of caution. The learned counsel could not substantiate his argument that the court has to enter into an enquiry before coming to that conclusion.

On the other hand, in Bhagwan Singh v. State of Punjab, : 1952 CriLJ1131 , it has been held that it is no part of a Court's duty to enter upon a roving enquiry in the middle of trial on matters which are collateral to the main issue, and that the burden is on the person making the allegations to substantiate them and if he chooses to rely on evidence which does not satisfy the Court, he must suffer the same fate as every other person who is unable to discharge an onus which the law places upon him. The learned counsel argued that the record does not show that the Sessions Judge satisfied himself before the statements were made part of the record in the Sessions Court. This raises the question as to what is the stage at which the Judge has to satisfy himself, whether it is the initial stage when he

transfers these statements as part of the record in the Sessions Court or is it the later stage. As discussed above, it being a rule of caution, no hard and fast rule can be laid. It is enough if the record discloses that before accepting that evidence he is satisfied that these statements are true.

8. In the instant case from a perusal of the Judgment of the Court below, we find that the court below after being satisfied that the statements of the two witnesses recorded in the committing Magistrate's Court were true and correct has relied on them. He has given reasons and in our opinion that is sufficient compliance with the provision of Section 288 Cr. P. C. The authorities cited by the learned counsel, 1955 Andh LT (Cri) 253 and AIR 1952 Bhopal 25 do not take his case any further. In both those cases, it has been held that the Judge has to be satisfied as to the truth of the statements of the witnesses before those statements are treated as evidence in the Sessions Court.

It is next urged that the power conferred by the section is intended to be exercised with reference to each witness and evidently does not contemplate a general order with reference to all witnesses. It is so but the record does not show that there is a general order. On the other hand it appears that while P. W. 1 was examined at the request of P. P. the previous statement of the witness was transferred to the record of the Sessions Court and on 18-4-58 when the other witness was examined, the court passed the order that the statement of the witnesses should be transferred. From this it cannot be inferred that there was a general order.

9. It is further urged that without corroboration those statements could not be relied upon. We do not dispute this proposition and therefore do not wish to discuss the authorities cited by the learned counsel in this regard. The court below, we find has taken the same view and has held that there is sufficient corroboration. The next question is whether the statements of these two witnesses have been corroborated by other evidence. The court below has referred to various circumstances pointing to the corroboration. From paras 11 to 15, it has discussed the intrinsic and extrinsic corroboration of the accused. We agree with the view of the court below. P. W. 5 the wife of the deceased has stated that while her husband was leaving her house in the morning, he told her that he was going to

village Anjani and that he would return at the time of the break-fast. She further says that when P. W. 1 came and informed p. W. 4 about the incident, she was inside the kitchen and came out and heard what he had stated to P. W. 4 viz., that the accused had killed the deceased in his presence.

The fact that the deceased had gone to the village Anjani is corroborated by P. W. 1 and P. W. 4 corroborates the statement of P. W. 5 that she was in the house at that time. The presence of P. W. 8 is not to be doubted and he bears out the statement of P. W. 1 in the committing Magistrate's Court. The conduct of the accused also furnishes another corroboration. A-1 to A-3 were not at their house till January 15. A search was made in the village and round about the villages and it was only on the 15th January in the evening that they were arrested in the forest by P. W. 18. A-4 surrendered himself on the 17th January and that is spoken to by P. S. I.

10. The other corroborative piece of evidence is the recovery of the weapons, which is rolled upon by the lower Court. These weapons have been recovered at the instance of the accused and stained with blood. The learned counsel for the accused laid great stress on the fact that there is no evidence of the grouping of the blood and unless there is such evidence, no reliance could be placed on the recovery and it cannot be said that those instruments were used at the time of the murder. We have already adverted to the motive and the question whether the blood on the articles recovered was of the same group becomes immaterial. As regards the characterisation of the accused, A-2 to A-4 as hirelings we cannot agree with the lower Court. Still, it is clear that their help was sought and they were willing to co-operate with the accused In carrying out the design.

11. Lastly, the evidence of motive also furnishes sufficient corroboration. White discussing the evidence of motive, we have held that so far as A-1 was concerned there was sufficient motive. It cannot therefore be said that statements of P. Ws. 1 and 3 recorded in the committing Magistrate's Court have not been sufficiently corroborated. The learned counsel argued that no weight could be attached to these statements because there were many discrepancies in their depositions. This argument is equally devoid of force. It is no doubt true that there are certain

discrepancies, but in our opinion, they are not material and do not affect the case at all. The learned Sessions Judge has relied on those depositions and we do not see any reason why we should not accept the same. If the statements of P. Ws. 1 and 3 arc read along with the other evidence on record, there does not remain any doubt as to the guilt of the accused.

12. The question of sentence remains to be considered. The learned Sessions Judge has held the accused guilty and sentenced each of them to death. But from the evidence, it is not clear as to which of the accused dealt the fatal blow or which wound is fatal by itself. In view of this, we think the ends of justice would be met if instead of the sentence of death, each of the accused is sentenced to imprisonment for life. With this modification of sentence, we confirm the conviction.

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