

Thukuda Khadia and anr. Vs. the State

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Court : Orissa

Decided On : Aug-02-1967

Reported in : AIR1968Ori107; 1968CriLJ767

Judge : S. Barman, C.J. and ;A. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 288

Appeal No. : Criminal Appeal No. 94 of 1965

Appellant : Thukuda Khadia and anr.

Respondent : The State

Advocate for Def. : Standing Counsel for ;Government Adv.

Advocate for Pet/Ap. : C.V. Murty, Adv.

Disposition : Appeal allowed

Judgement :

Barman, C.J.

1. The two accused appellants Thukuda Khudia and Solomen Munda were convicted on a charge of murdering a number of Muslims during the communal disturbance that took place in March 1964 in Sundargarh district and sentenced to imprisonment for life by the Additional Sessions Judge, Sambalpur-Sunda garh

Along with them 20 others were also charged and they were acquitted.

2. On March 25, 1964, at about 4 P M. at village Kamakalli near Champajharan R. S. 4 miles from Banki P S. of Sundargarh District there were communal disturbances, In the course of which some members of the Muslim community are stated to have been killed by a mob which included the two accused-appellants. It is said that they had killed 5 Muslims on a paddy field nearabout the village. The following day, namely, March 26, 1964, P. W. 12 Prahlad Harijan a Police Constable filed at the Banki Police Station 3 First Information Report which was recorded by the Officer-in-charge Investigation was taken up by the officer-in-charge of Banki Police station P. W 13 Giridhari Pujhari; he remained in charge of the investigation till April 12. 1964 on which date he handed over the investigation to another Police Officer Anadaram Patra P.W, 14. P.W 13 however did not examine any of the witnesses P. W 14 visited the spot on the same day he took over charge from P. W. 13 and from subsequent days he examined the eye-witnesses P. W 4, 5. 6 and 7. After investigation the two accused-appellants along with the other accused persons were charged, committed, and sent up for trial before the learned Additional Sessions Judge who convicted and sentenced them and acquitted the others as aforesaid

3. The prosecution case is mainly based on the statements of the four eye-witnesses P. Ws 4, 5, 6 and 7, made before the Committing Magistrate; all those statements were tendered and admitted in evidence under Section 288. Criminal Procedure Code But at the sessions trial all these witnesses went back on what they had stated before the Committing Magistrate The settled position in law is that where a witness has resiled from his evidence in the committing court and the evidence has been brought in under Section 288 Criminal Procedure Code, then, before such evidence is accepted satisfaction about it, being true and reliable is necessary. In most cases this satisfaction can come only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. If there be a case where even without such extrinsic support the Judge of facts, after bearing in mind the intrinsic weakness of the evidence, in that two different statements on oath have been

made, is satisfied that the evidence is true and can be safely relied upon, the Judge will be failing in his duty not to do so, Sharnappa v. State of Maharashtra, AIR 1964 SC 1357.

4. Bearing the aforesaid principle in mind, the question is: Is there any corroboration of what these four eye-witnesses stated before the Committing Magistrate? The evidence of P. W. 4 Tirtha Gouda is that accused appellant Solomon Munda and others shot the arrows and the Mohammedans fell down; the other accused appellant Thukuda Khadia took a Falsia and cut the Mohammedans with it. But before the learned Additional Sessions Judge he said that he knew nothing about the occurrence, that he had made the aforesaid statement before the committing court as he was threatened by the Police, that the Police detained him at the Police Station for 8 days and threatened him to make the statement as tutored by them. P. W. 5 Prem Chand Munda also spoke about the complicity of the two accused-appellants in the killing of the Mohammedans in the manner they did a stated by him before the committing court.

Before the learned Additional Sessions Judge, however, this witness stated that he was threatened and coerced by the Police and so he made the statement as tutored by the Police. He told the Police that he did not know anything about the occurrence and that he was lying ill at his house, Similarly P. W. 6 Bhudru Munda and P. W. 7 Dhadi Singh Rautia, though they had before the committing court implicated the two accused-appellants in the incident, said before the Additional Sessions Judge at the trial that they knew nothing about the occurrence. The statements of all these witnesses who turned hostile at the trial stage are therefore wholly unreliable and in the absence of independent corroboration they cannot be accepted as true

5. The view is further confirmed by the fact that although the first investigating police officer (P W. 13) went to the place of occurrence on March 26 1964 after the First Information Report had been lodged he did not examine any of the eye-witnesses It is significant that subsequently when the other Police Officer P W 14 took up investigation on 12-4-64 he examined these witnesses --one after another--more than three weeks after the incident The explanation given by P. W.

13 the first investigating police officer for this, omission is that from March 29. 1964 till April 12. 1964 when he handed over charge of the investigation to P W 14 he could not hold any investigation in the case as he was preoccupied with the investigation of other cases arising out of communal disturbances. This is not convincing.

6. The medical evidence of the Doctor (P W. 10) who held the post mortem examination over the dead bodies of the victims is also not helpful to connect the two accused-appellants with the killing of the alleged victims As the post-mortem report shows, all the dead bodies were highly decomposed with colliquative putrefaction and beyond recognition, and ravaged by wild animals and ants; and in the case of all the dead bodies the heads were completely or almost completely severed by some moderately heavy cutting weapons. The nature of the injuries on the highly decomposed bodies as found by the Doctor does not conclusively prove that the victims were killed in the manner as stated by the four eye-witnesses.

7. The learned Additional Sessions Judge, while noticing the discrepancies in the evidence of the eye-witnesses with regard to the nature of the weapon used and the other infirmities in their evidence, appears to have ignored the same. The reasoning on which he convicted the two accused-appellants is not supported by acceptable evidence. The prosecution has failed to prove beyond doubt the charge against the two accused-appellants. In any event they should be given the benefit of doubt.

8. In this view of the case, the order of conviction and sentence passed on the two accused appellants is set aside and they are acquitted They should be set at liberty forthwith, as already directed in our order dated July 20. 1967 This Criminal Appeal is allowed.

A. Misra, J.

9. I agree.