

1993 AIR SC 2644 . 1994 SCC SUPP 1 590 . 1993 CRLJ SC 3684 . 1993 JT SUPP 1 531 . 1994 SCC CRI 1 734 . 1993 CRILJ 3684 . 1993 JT SUPPL SC 531 . 1994 SCC CRI 734 . 1994 SUPP SCC 1 590 . 1993 CRI LJ 3684 .

State Of A.P v. Punati Ramulu And Others

Supreme Court Of India (19 Feb, 1993)

CASE NO.

Criminal Appeal Nos. 377-78 of 1985, decided on February 19, 1993

ADVOCATES**JUDGES**

Dr. A.S Anand

N.P Singh, JJ.

Important Paras

1. 5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on bandobast duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 2 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the Circle Inspector, PW 22, during the investigation of the case at about 12.30 noon, as the FIR, Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the FIR in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 CrPC. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at

Narasaraopet and that it had been brought into existence at Pamaidipadu itself, after due deliberation. Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.

2. 4. The case as put forward by the prosecution was that PW 1 went to Narasaraopet from the scene of the occurrence. He contacted PW 13 to draft the report addressed to the Circle Inspector of Police. PW 1 was projected by the prosecution as an eyewitness who is the nephew of the deceased and had accompanied the deceased when the latter went to realise debts from the villagers. On reaching the police station at Narasaraopet he was informed by the constable on duty that the Circle Inspector, PW 22, had already received information about the occurrence and had left for the village. The police constable at the police station refused to record the complaint presented by PW 1 on the ground that the said police station had no territorial jurisdiction over the place of crime. It was certainly a dereliction of duty on the part of the constable because any lack of territorial jurisdiction, could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.

Summary

1. The High Court after appraisal of the evidence and bestowing its deep consideration accepted the appeal filed by the convicts and acquitted A-1 to A-3 and A-6 to A-8 of both the offences.
2. All the accused who had initially been sent up for trial stood acquitted.

3. One against the judgment acquitting A-1 to A-3 and A-6 to A-8 by the High Court and other against the judgment dismissing the State appeal against the acquittal of A-4, A-5 and A-9.

4. 3. In our opinion, the reasons recorded by the High Court for recording acquittal of the respondents is based on proper appreciation of evidence.

5. Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues.

JUDGMENT

Order

1. Nine accused persons, Punati Ramulu, Nalamala Ramakotayya, Lam Koteswararao, Kancheti Yellamandayya, Nellori Venkateswarlu, Poonati Ramedass, Popuri Govindu, Popuri Ramulu and Cherukuri Danumayya were tried for offences under sections 148 and 302 read with 149 ipc by the learned Sessions Judge for the occurrence which took place on March 28, 1991 at about 7.00 or 8.00 a.m at village Pamidipadu in which one Krishna Rao had been murdered. After recording the evidence of various witnesses including PW 1 to PW 4, the learned Sessions Judge convicted Punati Ramulu (A-1), Nalamala Ramakotayya (A-2), Lam Koteswararao (A-3) and Poonati Ramedass (A-6), Popuri Govindu (A-7) and Popuri Ramulu (A-8) for an offence under Section 148 IPC, and sentenced them to suffer rigorous imprisonment for two years. They were also convicted for the offence under Section 302 IPC and sentenced to suffer imprisonment for life. A-4, A-5 and A-9, whose names were not disclosed at the trial as to be present at the time of occurrence by PW 1 to PW 4, were given the benefit of the doubt and acquitted. The convicts A-1 to A-3 and A-6 to A-8 filed an appeal in the High Court against their conviction and sentence. The State also filed an appeal against the acquittal of A-4, A-5 and A-9. The High Court after appraisal of the evidence and bestowing its deep consideration accepted the appeal filed by the convicts and acquitted A-1 to A-3 and A-6 to A-8 of both the offences. The appeal filed by the State

against the acquittal of A-4, A-5 and A-9 was dismissed. Consequently all the accused who had initially been sent up for trial stood acquitted. The State filed two special leave petitions in this Court. One against the judgment acquitting A-1 to A-3 and A-6 to A-8 by the High Court and other against the judgment dismissing the State appeal against the acquittal of A-4, A-5 and A-9. On April 29, 1985 leave was granted to file the appeal against the acquittal of A-1 to A-3 and A-6 and A-8 who had been acquitted by the High Court, but the special leave petition against the dismissal of the State appeal challenging the acquittal of A-4, A-5 and A-9 was dismissed. It appears that SLP (Cri) No. 714 of 1984 was also filed by the complainant against the acquittal of A-1 to A-3 and A-6 to A-8 but the same was dismissed as withdrawn since leave had been granted to the State against the judgment acquitting the aforesaid six accused. Criminal Misc. Petition No. 32/89 under Section 482 CrPC was also filed by the wife of the deceased to be impleaded as a party and to be granted an opportunity at the time of hearing. Vide order dated January 5, 1989 the said application was also dismissed.

2. We have heard learned counsel for the parties and examined the record with their assistance.

3. In our opinion, the reasons recorded by the High Court for recording acquittal of the respondents is based on proper appreciation of evidence. The findings are not only supported by proper appreciation of the evidence but are also reasonable and sound. Thanks to the tainted investigation, the murder of Krishna Rao goes unpunished. But we must hasten to add that since the defence has been able to successfully challenge the bona fides of the police investigation, it has detracted materially from the reliability of the other evidence led by the prosecution also.

4. The case as put forward by the prosecution was that PW 1 went to Narasaraopet from the scene of the occurrence. He contacted PW 13 to draft the report addressed to the Circle Inspector of Police. PW 1 was projected by the prosecution as an eyewitness who is the nephew of the deceased and had accompanied the deceased when the latter went to realise debts from the villagers. On reaching the police station at Narasaraopet he was informed by the constable on duty that the Circle Inspector, PW 22, had already received information about the occurrence and had left for the village. The police constable at the police station refused to record the complaint presented by PW 1 on the ground that the said police station had no territorial jurisdiction over the place of crime. It was certainly a dereliction of duty on the part of the constable because any lack of territorial jurisdiction, could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having

jurisdiction over the area in which the crime was said to have been committed.

5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on bandobast duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 2 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the Circle Inspector, PW 22, during the investigation of the case at about 12.30 noon, as the FIR, Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the FIR in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 CrPC. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had been brought into existence at Pamaidipadu itself, after due deliberation. Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.

6. Keeping in view these circumstances and being of the opinion that the findings recorded by the High Court while acquitting A-1 to A-3 and A-6 to A-8 are borne out by the evidence and are otherwise also reasonable and sound, we do not find any justification to interfere with the order of acquittal.

Consequently the State appeal fails and is dismissed. The respondents are on bail. Their bonds shall stand discharged.