SUPREME COURT OF INDIA

Vaikuntam Chandrappa

Vs.

State of A.P.

Crl.A.No.74 of 1959

(A. K. Sarkar, K. Subba Rao and K. N. Wanchoo, JJ.)

14.08.1959

JUDGEMENT

WANCHOO, J.:

1. The four appellants and one other were convicted by the Sessions Judge, Anantapur Division, under S. 302, Indian Penal Code, read with S. 34 and were sentenced to death. They were also convicted under other Sections and awarded varying punishments. All five preferred separate appeals to the High Court of Andhra Pradesh. One appeal was allowed while the appeals of the four appellants were dismissed. By special leave; these four appellants filed the present appeal against the judgment of the High Court.

2. Shortly stated, the prosecution case is as follows : In Chippagiri village, Anantapur District, there were bitter quarrels occurring between members of two factions, for convenience described as Reddy group and Kamma group. The former was led by one Virupaksha Reddy and the latter by accused A-1 to A-3. There were several criminal cases between the members of the two groups and despite the sincere attempt of Acharya Vinoba Bhave to settle their disputes, though there was a short respite, the factious spirit received a further impetus by the impact of Panchayat Board elections in the village. On account of these quarrels the appellants, along with four others, on getting information that Virupaksha Reddy would be returning from Isurallapalli, to which place he had gone to attend a seminar of Bharat Sevak Samaj, formed themselves into an unlawful assembly with the common object of murdering the said Reddy, and went in a jeep No. ADQ 1243 armed with sickles, spears and daggers. They placed the jeep near Bandrakalva culvert at mile-stone 201/3 on Gooty-Guntakal Road and forced the jeep No. ADQ 273 in which Virupaksha Reddy was travelling to stop and dragged Virupaksha Reddy out of the jeep and hacked him to death in a pit nearby.

3. The evidence against the appellants was both direct and circumstantial. The direct evidence consisted of the statements of three eye-witnesses, namely, P. Ws. 1, 2 and 3. Of these, P. W. 3 was the driver of the deceased and knew the eight assailants from before. P. Ws. 1 and 2 were apparently disinterested witnesses who did not know any of the assailants from before and in their case an identification parade was held. The circumstantial evidence consisted of the motive for the attack, the fact that the accused were seen in the company of one another before and after the incident and also the fact that they were seen in the jeep ADQ 1243, the movements of which were traced before and after the incident. The main evidence on which the learned Sessions Judge relied was the testimony of the three eye-witnesses. He was of the view that the driver (P. W. 3), though he was

present when the murder took place and knew the assailants from before, was not a disinterested witness. He was not, however, prepared to reject his testimony completely; at the same time he was not prepared to rely on his testimony alone for the conviction of the eight accused before him, and that was why he acquitted three of the accused though they were named by the driver. The view he took was that safety lay in looking for corroboration of the testimony of the driver and in that connection he relied mainly on the evidence of P. Ws. 1 and 2 and the corroboration available from the circumstantial evidence. In the result he convicted the four appellants and one other.

4. The High Court also took the same view of the evidence of the driver and was prepared to rely on it provided corroboration was available. The High Court found this corroboration in the statements of the other two eye-witnesses, namely, P. Ws. 1 and 2, so far as the present four appellants were concerned. It gave the benefit of doubt to the fifth accused convicted by the Sessions Judge, because there was no corroboration of the driver by P. Ws. 1 and 2 in so far as that accused was concerned and the corroboration available from the circumstantial evidence was not considered sufficient. In the result, therefore, the High Court also sought corroboration of the evidence of the driver on whom it was not prepared to rely solely and found the same mainly in the evidence of P. Ws. 1 and 2 supported by the circumstances proved in the case.

5. It was urged on behalf of the appellants that the observations of the learned Sessions Judge as to the testimony of the driver P. W. 3 showed that the Sessions Judge considered him a liar and therefore an unreliable witness and as such there could be no question of the corroboration of his testimony. It is true that some of the observations of the learned Sessions Judge might give rise to what has been urged on behalf of the appellants; but a consideration of the entire manner in which the Sessions Judge has dealt with the evidence of the driver (P. W. 3) shows that the High Court was right in the view it took of the Sessions Judge's appreciation of the driver's evidence and in holding that that evidence was acceptable subject to the necessity of corroboration as a rule of caution. We are therefore, of opinion that the view taken by the High Court of the evidence of P. W. 3 is in accord with the view taken by the Sessions Judge and the approach of the High Court in requiring corroboration of P. W. 3's evidence before convicting any of the assailants on it is correct. P. W. 3 being the driver of the deceased would naturally be there on the jeep. His presence at the time of murder is established without doubt, considering that he had received a wound during the early part of the incident. But as there were reasons to think that he was not entirely disinterested and might have been exaggerating things, the High Court rightly insisted on corroboration of his evidence by other eye-witnesses before convicting any of the assailants.

6. The main question canvassed before us by the learned counsel for the appellants is that even if the matter is approached in the manner in which the High Court had approached it, there was no corroboration of the evidence of the driver (P. W. 3) in so far as two of the accused, namely, Vaikuntam Chandrappa (A-3) and Nabi Sab (A-4) were concerned. We shall first examine this contention with respect to Accused 3. He is one of the three brothers who were the leaders of Kamma group. He has been named by P. W. 3. The corroboration on which the High Court relied in his case is the statement of P. W. 1. This witness did not know any of the assailants from before. Therefore, after the arrest of the assailants, seven of them (except Vaikuntam Narayana) were put up for identification by him. These seven were mixed with thirty-nine others persons. P. W. 1 picked out three out of seven suspects and also picked out six out of the remaining thirty-nine. Thus, in effect, he made three correct identifications and made six mistakes at the identification parade. It was urged that in the circumstances, the identification by this witness, even though he was disinterested, was unreliable and could not be used as corroboration of the evidence of the driver. If this identification is left out of account, the circumstantial evidence against this accused would not

be sufficient to corroborate the statement of the driver as to the presence of this accused at the time of the incident. It has, therefore, to be seen whether the identification by this witness is reliable in spite of the fact that he was a disinterested person. The first circumstance in that connection that stares one in the face is that this witness while picking out three out of the seven suspects picked out double that number out of those mixed with the suspects. The first report was made by this witness in which he gave the number of assailants as about 8 or 9. The impression which one gets from this identification by him is that he was prepared to identify the maximum number of the assailants, namely, nine which he had given in the first report, without being sure whether he was picking out persons whom he had really seen at the time of the incident. Further the identification looks as if he was bent on picking out nine persons irrespective of his being certain that he has seen them at the time of the incident. It seems to us that in these circumstances no reliance can be placed on such an identification even of a witness who is disinterested. The second circumstance in connection with this identification is that in a parade of this kind consisting of 46 persons in all in which there were seven suspects and in which nine persons were picked out, the probability is that even if a person who had not seen the murder were to pick out suspects he would by mere chance be able to place his finger on one or two of the suspects. In these circumstances, the conclusion cannot be escaped that the three suspects might have been picked out by this witness by mere chance. It is true that when he came to give evidence in court, the witness did point out to the same three accused as having been seen by him at the time of the murder. It is also true that the substantive evidence is the statement in court; but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There may be exception to this rule where the court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding. But in this case we are not prepared to consider P. W. 1 as a witness of that exceptional kind. Further when a test identification has taken place as in this case, its effect on the evidence of the witness in court must always be assessed; and in the circumstances of this case we are not prepared for reasons already given to rely upon the identification of P. W. 1 in court. In the result therefore, the evidence of P. W. 1 as to the identification of the accused is such that it must be rejected in spite of the fact that he is a disinterested witness. Once it is rejected it cannot be used as corroboration of the evidence of P. W. 3. Thus so far as this accused is concerned one is left only with the testimony of P. W. 3 and the circumstantial evidence. We have already said that the circumstantial evidence by itself is not such as to make certain the presence of this witness at the time of the murder. The High Court convicted this accused mainly because it was of the opinion that the evidence of P. W. 1 could be used as corroboration. Once, however, that evidence is rejected, there is no corroboration and on the principle laid down by the High Court that there should be no conviction on the uncorroborated testimony of P. W. 3 this accused must be given the benefit of doubt in the same way as the fifth person acquitted by the High Court.

Nabi Sab (A-4)

7. Then we come to Accused 4, namely, Nabi Sab. The evidence against him consisted of the statement of P. W. 3 and its corroboration by P. W. 2. This witness also did not know any of the assailants before. He also went for identification on the same day as P. W. 1 and there was a similar parade in his case also in which seven suspects were put up along with thirty-nine other persons. He picked out two of the suspects and one wrong person. He did not pick out this accused in the parade. When he came to give evidence at the trial he said that this accused was also present at the time of murder and took part in it. He explained why he had failed to pick him out in the identification parade, namely, change in the personal appearance of the accused on account of the absence of

moustaches. The witness had also failed to pick out this accused in the Committing Magistrate's court, and the explanation for this failure was also the same. The question is whether in these circumstances the evidence of this witness when he picked out this accused for the first time in the sessions' court can be used as corroboration of the statement of P. W. 3. It is again true that the substantive evidence of the witness is his statement at the trial; but in these circumstances when the witness failed to pick out this accused both in the identification parade as well as in the Committing Magistrate's court, it would, in our opinion, be entirely incorrect to rely upon this belated identification in the sessions court. The evidence of this witness therefore must be rejected on account of these reasons so far as this accused is concerned. Once this evidence is rejected, there is the sole testimony of P. W. 3 against this accused. Circumstantial evidence against him is not of such a nature as to lead to the certain inference that he must have been present at the time of the incident. In his case also, the High Court maintained the conviction because it accepted the identification of P. W. 2. On the same principle on which Accused 8 was acquitted by the High Court, we are of opinion that this accused is also entitled to benefit of doubt and must be acquitted, once the evidence of P. W. 2 with respect to him is rejected.

Re. Kesetti Seenappa (A-5) and Gaddala Maddanna (A-7).

8. This leaves the case of Accused Nos. 5 and 7. They were named by P. W. 3. They were also identified by P. W. 2 in court whose performance at the test identification was satisfactory. So far as these two appellants are concerned, the High Court was right in holding that there was sufficient corroboration of the evidence of P. W. 3. In these circumstances, their appeal must fail.

9. We, therefore, allow the appeal of Vaikuntam Chandrappa and Nabi Sab and order their acquittal. The appeal of Kasetti Seenappa and Gaddala Maddanna is rejected.

Order accordingly.

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