

Ramaphupala Reddy and Others

Vs

The State of Andhra Pradesh

Criminal Appeal No. 227 of 1967

(S. M. Sikri, K. S. Hegde JJ)

28.09.1970

JUDGMENT

HEGDE, J. -

1. The appellants and one Boya Ranudu were charged with the murders of Boya Thiamiah and Boya Sanjeevu as well as some other lesser offences at about 8 a.m. on September 8, 1964, near milestone No. 81/2 on the Dharmavaram - Kalyandurg Road. They were tried by the learned District Judge, Anantapur, for those offences. The learned District Judge disbelieving the witnesses who spoke to the incident viz. P.W.s 1 to 3 acquitted all the accused. As against that decision of the learned District Judge, the State went up in appeal to the High Court of Andhra Pradesh. The High Court accepted the appeal so far as the appellants (Accused 1 to 5) are concerned and convicted them under various charges including one under Sections 302/149, I.P.C., for which offence all of them were sentenced for imprisonment of life. It is not necessary to refer to the other charges because those charges are interwoven with the offence of murder. No arguments were addressed to us about those charges separately. The question for decision is whether the incident spoken to by the P.W.s 1 to 3 is true? If we accept the evidence regarding the incident, there is no doubt that the accused are guilty of the offences held to have been proved against them by the High court. If on the other hand, we are unable to accept that evidence then they are entitled to be acquitted of all the charges. This appeal against the decision of the High Court was brought after obtaining special leave from this Court.

2. It was alleged on behalf of the prosecution and not denied on behalf of the accused that from a very long time there were two factions in Thogarakunta village in Dharmavaram Taluk. One of the factions was known as Kapu faction though in that faction there were a sprinkling of Boyas. The other faction was known as Boya faction. In that faction there were some Kapus. Between these factions there was bitter enmity. There were cases and counter-cases between the two factions. On the date of the occurrence the deceased and some of their partymen had to appear in a criminal in a criminal case pending against them in the Court of First Class Magistrate, Dharmavaram.

3. The prosecution case is that some of the accused in that case had gone to Dharmavaram on the evening of the 7th itself. But the two deceased persons left for Dharmavaram on the early morning of September 8, 1964. On the way at a coffee hotel they met P.W.s 1 and 2 who were also going to Dharmavaram. The four joined together and proceeded to Dharmavaram after taking some coffee at the hotel of P.W. 5, P.W. 3, a relation of the deceased persons, also left for Dharmavaram that morning carrying a bag of cold rice for the accused in the case. It is said that he was going at some distance behind the four persons referred to earlier. Meanwhile Accused 5 Boya Vhinna Polappa came from behind and went past them briskly. When the aforementioned four persons proceed a

little further all the accused armed with pistols and the weapons emerged out of a dried up deep water channel and surrounded the two deceased persons. At that time Accused 1 and 2 had revolvers in their hands, Accused 3 had a dagger. Accused 1 fired revolver shots at the deceased Boya Thimmiah twice or thrice. At the same time Accused 3 stabbed him below his armpit with a dagger. When Thimmiah fell down, accused 4 picked up a big stone (of the size of pumpkin) from near the road and dropped it on the head of Thimmiah. When the accused were attacking Thimmiah, Sanjeevu began to run from that place but Accused 2 and 5 chased him and Accused 2 fired at him twice from behind. On receiving these shots Sanjeevu fell down with his back to the sky. Then Accused 5 picked up a big stone and violently threw it on the head of Sanjeevu. Meanwhile seeing P.W. 3 coming that way the accused gave him a chase but he ran for his life. They were not able to overtake him. At this stage one of the accused threw a stone which hit him on the right calf muscle but yet he ran away and his pursuers were not able to catch him.

4. After the aforesaid events. It is said that the accused came and threatened P.W. 1 not to disclose the offence to anyone and if he did disclose, he would meet the fate that befell the deceased persons. They asked him to take an oath that he would not divulge the matter to anyone. He did so. Thereafter they took away with them P.W. 2. After the accused and P.W. 2 left the place P.W. 1 went to Kanganapalli and there caught a bus for Dharmavaram where he cashed his pay cheque for which purpose he went to Dharmavaram that day. From Dharmavaram he went to Chennakothapalli where he had some work. When he was returning to his village next day, at the place where the murders had taken place, he saw a large number of persons including some police officers. The Sub-Inspector asked him to remain there. Later on he was examined at the inquest.

5. P.W. 2's version is that from the place of occurrence the accused took him to Thopudurthi. There he was kept in the house of the elder brother of Accused 1. During the time he was with the accused he was repeatedly warned not to divulge the matter to anyone and to be beware of the likely consequences if he dared to disregard their warnings. Thereafter in the evening they took him to Anantapur and left him there. That night he went to his house and stayed with his family.

6. P.W. 3 supported the version given by P.W. 1 and 2 as regards the occurrence. His further case is that when he took to his heels from the scene of occurrence Accused 6 threw a stone at him and that caused an injury on his right calf but yet he continued running, out of fear for his life and reached his sister's place at Bathalapuram which is about 2 1/2 miles from the scene of occurrence. There he informed his sister about the occurrence but he was not bold enough to get out of the house and consequently he could not inform the authorities. He also stated that he returned to his village on the next morning and at the scene he found a large number of people gathered. The police had arrived at the scene by that time. He stayed at the scene till the evening and he was examined at the inquest.

7. According to the prosecution some time after the occurrence P.W. 8, a postal runner happened to pass through the scene of occurrence and he saw two dead bodies there. He went and informed the matter to the village Munsiff of Kanganapalli who recorded his statement (Ex. P-7) and thereafter sent the same with his report (Ex. P-8). Further, the prosecution evidence discloses that somewhere about the noon of the day of occurrence P.W. 9, a relation of the deceased persons was lying at Kanganapalli. As he knew that his relations had gone that way that morning, he became suspicious that they might have been done to death and hence he proceeded towards the scene of occurrence but he was not bold enough to go to the scene. Therefore he first sent P.W. 7 to go and see whether the dead bodies were those of his relations. P.W. 7 accordingly proceeded to the scene and he came and told him that they were the dead bodies of Thimmiah and Sanjeevu. Thereafter he (P.W. 9) himself went to the scene and saw the dead bodies of the deceased persons and came back and

reported the matter to the village Munsiff of Thogarakunta. That report is marked Ex. P-9. In his report P.W. 9's case suspicion on some of the members of the opposite faction including the appellants.

8. The evidence of P.W.s 1 to 3 relating to the occurrence is fully corroborated by P.W. 14 who conducted post-mortem examination on the dead bodies of the deceased person and also P.W. 15 the fire-arms expert. The evidence of P.W.s 1 to 3 also gets corroboration from the testimony of P.W. 7 who claims to have been P.W.s 1, 2 and the two deceased person going towards Kanganapalli on the morning of September 8, 1964.

9. The appellants denied that they had any hand in the murder of the deceased persons. They pleaded that the case had been foisted against them because of enmity. They did not deny the existence of two factions in the village and the further fact that there was serious hostility between the two factions. In fact their case is that the present case has been foisted against them because of that hostility. On their behalf they examined D.W. 1, the Professor of forensic Medicine, Madras, to establish that the injuries found on the back of Sanjeevu could not have been caused by revolver shots. By that evidence they sought to show that the evidence given by the occurrence witnesses is not true.

10. The Trial Judge, rejecting the testimony of P.W. 14 and relying on the evidence of D.W. 1, came to the conclusion that the injuries found on the back of the deceased Sanjeevu could not have been caused in the manner deposed to by P.W.s 1 to 3. He opined that they could not have been caused by revolver shots. He also came to the conclusion that P.W.s 1 to 3 were partisan witnesses and that their evidence is unnatural and unreliable. As a result of those conclusions he acquitted the appellants as well as Boya Ranudu. The acquittal of Ranudu was confirmed by the High Court on the ground that there is no satisfactory evidence to show that he participated in the incident. The appellate court occurring with the trial Court came to the conclusion that P.W. 2 is not a reliable witness. Both the courts held that he was a partisan witness and that his evidence is bristling with contradictions. His evidence has not been commended for our acceptance. Therefore we need not refer to the same. But it is necessary to state at this stage that the High Court did not come to the conclusion that P.W. 2 was not present at the scene when the occurrence took place. Hence the fact that his evidence was found to be unreliable cannot throw any doubt on the testimony of P.W.s 1 and 3.

11. P.W.s 5 and 6 have turned hostile to the prosecution. The Trial Judge had recorded in the deposition of P.W. 6 that his behavior in the witness-box was anything but satisfactory. He was hesitating while giving answers. In the circumstances of the case we have to exclude from consideration the testimony of P.W.s 5 and 6.

12. The appellate court had fully relied on the testimony of P.W.s 1 and 3. It also accepted the testimony of P.W.s 14 and 15 and rejected that of D.W. 1.

13. The scope of an appeal against an order of acquittal has been the subject of some controversy in courts for a long time. But that controversy is not settled by the decision of this Court in *Sanwat Singh v. State of Rajasthan* ((1961) 3 SCR 120) In that decision this Court summarised the legal position thus :

1. An appellate court has full powers to review the evidence upon which the order of acquittal is founded.

2. The principles laid down in Sheo Swarup's case (1934 LR 619 AB 398) afforded a correct guide for the appellate court's approach to a case disposing of such an appeal.

3. The different phraseology used in the judgments of this Court such as -

(a) "substantial and compelling reasons";

(b) "good and sufficiently cogent reasons";

(c) "strong reasons",

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.

14. To these tests we may add, as laid down by this Court in several decisions that the appellate court should also bear in mind the fact that the Trial Court had the benefit of seeing the witness in the witness-box and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the findings of the Trial Court. We shall presently proceed to consider whether the appellate court adhered to those principles in the examination of the evidence in this case. But before doing so we must remind ourselves that this appeal was brought under Article 136 of the Constitution. Although the powers of this court under that article are very wide, this court following the practice adopted by the Judicial Committee has prescribed limits on its own power and in criminal appeals, except under exceptional circumstances it does not interfere with the findings of fact reached by the High Court unless it is of the opinion that the High Court had disregarded the forms of legal process or had violated the principles of natural justice or otherwise substantial and grave injustice has resulted. This Court does not ordinarily reappraise the evidence if the High Court has approached the case before it in accordance with the guidelines laid down by this Court unless some basic error on the part of the High Court is brought to the notice of this Court. It is best to bear in mind that except in certain special cases, the High Court is the final Court of appeal and this Court is only a court of special jurisdiction.

15. As we shall presently see that in this case, the medical evidence has considerable importance. The Trial Court accepted the evidence of D.W. 1. But the High Court preferred to accept the evidence of P.W. 14. D.W. 1 is a highly qualified person. He appears to have had vast experience of medico-legal cases. He claims to have conducted as many as 314 post-mortem examinations. Hence prima facie his opinion is entitled to great weight. In his examination-in-chief, he gave as many as seven reasons in support of his view that the injuries found on the back of deceased Sanjeevu could not have been caused by revolver shots. But in his cross-examination he practically gave up all that he deposed in the examination-in-chief. Therein he deposed :

"The size of the Injuries 1 and 2 of deceased Sanjeevu (same as Sanjeevu) might have been the result of revolver shots for a distance provided the revolver is a country made one and it was loaded with a cartridge having an oversize bullet."

16. The prosecution case is that Sanjeevu was shot from a distance. The revolver with which he was shot has not been seized. The possibility of its being a country made revolver is not ruled out.

Therefore the evidence of D.W. 1 does not go against the prosecution case. It must be remembered that D.W. 1 did not examine Sanjeevu's dead body. He gave evidence on the basis of post-mortem certificates. It is true that in his re-examination he stated :

"I did not so far come across any such revolver country made or otherwise as could have produced the injuries 1 and 2 of Sanjeevappa."

17. This statement does not take away the effect of the opinion expressed by him in cross-examination. At best it shows that he was not competent to give expert evidence as regards the injuries caused by shots from country made revolvers. The Trial Judge while accepting the evidence of D.W. 1 completely overlooked the admissions made by him in his cross-examination to which we have made reference earlier whereas the learned Judges of the High Court took into consideration the entire evidence of D.W. 1. The reasons given by the learned Judges of the High Court for not preferring the evidence of D.W. 1 to that of D.W. 14 are cogent and convincing.

18. The evidence of P.W. 14 has a great deal of significant in this case. It may be remembered that P.W.s 1 and 3 were examined at the inquest on September 9, 1964. The post-mortem on the bodies of the deceased persons was done on the 10th. The information gathered from the post-mortem examination fully corroborates the testimony of P.W.s 1 and 3. On the facts of this case it cannot be said that P.W.s 1 and 3 could have, by merely seeing the injuries on the deceased persons, invented the version that they gave out in court. It was not suggested to these witness that the evidence given by them in court differed from the statements made by them during the inquest, in any material respect. At this stage it may be noted that according to the observations made by the I.O. who conduct the inquest there was blackening of the skin around the injuries Nos. 2 and 3 on Sanjeevu and the I.O. thought that around injury No. 2, there was scorching. But the evidence of P.W.s 1 and 3 is to the effect that Sanjeevu was shot from a distance. That evidence rules out the possibility of any scorching. The medical evidence shows that there was no scorching and the dark patches seen around those injuries were caused due to the passage of time. The evidence of P.W.s 1 and 3 consistent with medical evidence and not with the observation noted in the inquest report. This circumstance rules out the suggestion that P.W.s 1 and 3 must have given their statements at the inquest on the basis of the promptings by the police. The fact that these witnesses gave out their version long before the post-mortem examination of the dead bodies and the post-mortem examination fully supports their version is undoubtedly an important circumstance supporting the veracity of their evidence.

19. Now coming to the evidence of P.W. 1 he is a registered medical practitioner who had come to the Thogarakunta Village just a few months before the incident. He is not related to either of the parties. It was not even suggested that he was a member of any faction. Prima facie he is a disinterested witness and his evidence is entitled to weight. Further his evidence that on the day of the occurrence he went to Dharmavaram to cash his pay cheque which was received by him on the previous day is corroborated by the evidence of P.W. 4, the Sub-Treasury Officer and also the records of the treasury. One of the grounds on which his evidence was rejected by the Trial Court is that he is a friend of one Rajappa, of Dharmavaram, and that Rajappa is a relation of P.W. 9. and P.W. 9 is a relation of the deceased persons. P.W. 1 deposed in his examination-in-chief that at Dharmavaram he met Rajappa who is a friend of his. There is evidence to show that this Rajappa is a relation of P.W. 9. The learned Trial Court thought that this circumstance shows that P.W. 1 is an interested witness. But the High Court thought that the Trial Judge had erred in considering P.W. 1 as an interested witness merely because he is a friend of Rajappa and Rajappa is a relation of P.W. 9. The evidence on record does not disclose the nature of friendship between P.W. 1 and Rajappa P.W.

1 is a not likely to have given perjured evidence and that in a murder case merely because Rajappa, his friend, is a relation of P.W. 9 and P.W. 9 is a relation of the deceased persons. The High Court considered that the Trial Judge has relied on a very flimsy circumstance for coming to the conclusion that P.W. 1 was a partisan witness.

20. One other ground on which the Trial Court refused to place reliance on the testimony of P.W. 1 is that while he travelled in a bust from Kanganapalli to Dharmavaram, he did not disclose the incident to his fellow passengers nor did he disclose the same to the authorities at Dharmavaram and hence his behavior was unnatural. The explanation given by P.W. 1 was that he dared not speak out because of the threats given to him by the accused persons. He thought that his life would be in danger if he disclose the offence to anyone. This explanation was not found to be satisfactory by the Trial Judge but on the other hand the High Court thought that it was a satisfactory explanation. We are unable to hold that the view taken by the High Court is an untenable one. It is undoubtedly a possible view and to us it also appears to be a reasonable view.

21. Criticism was levelled against the evidence of P.W. 1 on the ground that according to him on the day of the occurrence he did not go back to his village but on the other hand he proceeded to Chenakothapalli from Dharmavaram for arranging to get the payment of arrears of his salary and that version is unbelievable. The evidence of P.W. 1 was to the effect that he was afraid of going back to the village on that day and when he was in Dharmavaram he thought that he could utilize the occasion for going to Chenakothapalli to see that the arrears of his salary are paid at an early date. The High Court thought that there was nothing inherently improbable in that explanation. It was unable to share the suspicion felt by the Trial Judge about the explanation given by P.W. 1.

22. Lastly the Trial Court thought it unsafe to place reliance on the evidence of P.W. 1 as according to it he had tampered with the attendance register. It held that though he was absent from the village on the 8th and 9th of September, 1964, he had marked himself present. P.W. 1's explanation on this point is that on the 8th he was on duty as he had gone to encash his pay cheque and on the 9th after coming back to the village he had examined several patients and given them medicine. The High Court accepted this explanation. It was open to it to do so. The fact that one page of the attendance register was torn was made much of by the Trial Judge. But on this point the High Court accepted the explanation of P.W. 1 that page had been torn by a child. On an overall assessment of the evidence of P.W. 1, the High Court came to the conclusion that he is a reliable witness. In doing so it did not depart from the normal process of appreciating evidence.

23. This takes us to the evidence of P.W. 3. He is undoubtedly an interested witness. He is a relation of the deceased persons and he belongs to their faction. His evidence that it was Accused 6, who threw the stone at him claim that he had witnessed the occurrence is supported by P.W. 1. His evidence on that aspect receives corroboration from the evidence of P.W. 7 as well as from the medical evidence. According to him he had sustained an injury because of the stone-throw. P.W. 14 who examined him is of the opinion that the injury found on his right calf could have been caused by a stone-throw. It is not the law that the evidence of interested witnesses is not entitled to any weight. Their evidence has got to be scrutinized with care. The further point made against this witness is that after going to his sister's place he did not inform the authorities about the occurrence nor did he go to Dharmavaram to inform his relatives about the occurrence and therefore his evidence is not believable. His explanation is that he was mortally afraid of the accused and as such he dared not get out of his sister's house. The Trial Court did not accept this explanation but the High Court accepted it. Different individuals react differently under the same circumstances. Here is a member of a faction who had seen the brutal murders of two of his relations. He himself was

chased and he escaped death very narrowly. There is nothing surprising that such a person being (was) afraid of getting out of his sister's house for a whole day. At any rate the High Court thought that there is nothing improbable about it.

24. Every one of the points taken into consideration by the Trial Court to arrive at the verdict of acquittal has been considered by the High Court and it has given reasons for differing from the conclusion reached by the Trial Court. There is nothing basically wrong in the approach adopted by the High Court. It considered the evidence on record on the basis of human probabilities and tested the evidence given by the witnesses by various methods known to law. After doing so it came to the conclusion that the evidence of P.W.s 1 and 3 is acceptable. As mentioned earlier they are the final judges of fact. We see no reason to interfere with their conclusions.

25. For the reasons mentioned above this appeal fails and the same is dismissed.

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