

Chaganti Kotaiah and Others

Vs

Gogineni Venkateshwara Rao and Another

And

Appikatla Sambian and Others

Vs

State of Andhra Pradesh

Criminal Appeals Nos. 173 and 174 of 1970

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

03.04.1973

JUDGMENT

VAIDIALINGAM, J.

1. These two appeals, by special leave, are directed against the judgment and order, dated August 25, 1970, of the High Court of Andhra Pradesh in Criminal Revision Case No. 727 of 1969 and Criminal Appeals Nos. 201 and 202 of 1969, setting aside the judgment of the Second Additional Sessions Judge, Guntur, in sessions Case No. 121 of 1968 and remanding the entire case for retrial.

2. In connection with the murder of the persons, Gogineni Koteswara Rao and Venigandla Ratnababu, and the injuries sustained by the prosecution witnesses, P.Ws. 5 to 7 and 13, on August 16, 1968, thirty persons were tried by the learned Sessions Judge of Guntur for offences under Section 148 and Section 302 read with Section 149 or alternatively under Section 302, read with Section 34 and Section 323, 324 and 326 of the Indian Penal Code. The learned Sessions Judge found that accused No. 5 to 7, 14, 18, 19, 24 and 25 had participated in part of the occurrence that took place on that day and convicted them under Section 148. The 5th accused was convicted under Section 302 for causing the death of Ratnababu and was sentenced to undergo imprisonment for life. Accused Nos. 6 and 7, who were found guilty of causing simple injuries to Ratnababu, were convicted under Section 324. Accused Nos. 14, 19, 24 and 25 were found guilty of causing injuries to P.W. 7. Accused No. 25 was convicted under Section 323 while the three others was convicted under Section 342. Accused No. 18 was found guilty of causing injuries to P.W. 13 and convicted under Section 324. Sentences of imprisonment of varying terms were imposed on the accused found guilty under Sections 323 and 324. A sentence of rigorous imprisonment was also imposed on all these eight accused for the offence under Section 148. The sentences of imprisonment were directed to run concurrently. The learned Sessions Judge found that none of the accused can be held guilty of the offence of causing the death of Koteswara Rao nor for the injuries sustained by P.Ws. 5 and 6. Accordingly he acquitted the eight convicted accused of all the other charges. Similarly he also found that the other twenty-two accused were not guilty of any of the offences with which they were charged and accordingly acquitted them.

3. Accused No. 5 challenged his conviction before the High Court in Criminal Appeal No. 201 of 1969. The other seven convicted accused, namely, accused Nos. 6, 7, 14, 18, 19, 24 and 25, filed Criminal Appeal No. 202 of 1969. One Gogineni Venkateswara Rao, who gave evidence as P.W. 7 and who was a brother of the deceased, Koteswara Rao, filed Criminal Revision case No. 727 of 1969 under Sections 435 and 439 of the Code of Criminal Procedure before the High Court against all the thirty accused challenging the several acquittals recorded against them by the learned Sessions Judge. The High Court allowed the two Criminal Appeals as well as the Criminal Revision and after setting aside the judgment of the Sessions Court, remanded the entire case for retrial. Criminal Appeal No. 173 of 1970 is by all the thirty accused against the order in Criminal Revision Case No 727 of 1969; while Criminal Appeal No. 174 of 1970 is by the eight accused, who had been convicted for different offences under Sections 302, 148, 323 and 324.

4. Mr. Basi Reddy, learned counsel for the appellants in both the appeals, has attacked the judgment of the High Court on the ground that the High Court has exceeded its jurisdiction in ordering a retrial at the instance of a private party, namely, P.W. 7. According to the learned counsel, the judgment of the trial court does not suffer from any of the infirmities the existence of which alone gives jurisdiction to a High Court under exceptional circumstances to interfere under its revisional jurisdiction at the instance of a private party. It was further urged that there has been no consideration of the appeals filed by the eight accused, who had been convicted of certain offences. The reasons given by the trial court for acquitting completely the twenty-two accused and for acquitting the eight convicted accused of certain other offences were fully supported before us. It was finally urged that no case had been made out for interference by the High Court in its revisional jurisdiction and the proper approach should have been to dispose of on merits the two Criminal Appeals filed by the eight convicted accused.

5. On the other hand, Mr. Narasimhachari, learned counsel appearing for P.W. 7, who filed the Criminal Revision, no doubt attempted to support in full the order of retrial passed by the High Court. We should frankly say that he found considerable difficulty in supporting the whole-sale retrial ordered by the High Court. But the learned counsel pressed before us for acceptance of the infirmities pointed out by the High Court in the reasoning of the learned Sessions Judge which, according to him, justified at least a reconsideration of the whole matter by the trial court. In particular it was stressed that there has been no consideration by the trial court of the constructive liability of the accused of the various offences with which they were charged, read with Section 34 or in the alternative, Section 149. The reasons given by the trial court for holding that the dying declaration, Ext. P-15, made by Ratnababu cannot be treated as evidence regarding the attack on Koteswara Rao, are erroneous in law. By this reasoning the trial court has really shut out that piece of vital evidence from consideration. These are some of the aspects that have been stressed for sustaining the order of the High Court. As the State is a party in the appeals before us, we have heard its counsel, Mr. Ram Reddy, merely to assist us. Mr. Ram Reddy has also supported the above reasons and has urged that these circumstances clearly show that there has been no proper trial before the learned Trial Judge. In view of the very serious infirmities in the reasoning of the trial court, the only proper course to be adopted-and which, according to him, has been rightly adopted by the High Court-is to have a retrial.

6. In the view we take that the order of the High Court ordering a retrial cannot be sustained and the two Criminal Appeals filed by the eight convicted accused will have to be sent back to the High Court for being heard and disposed of on merits. We do not think it necessary to very elaborately deal with the various items of evidence on record as also the reasons given by the learned Sessions Judge. In order not to prejudice the hearing of the appeals by the High Court, we refrain also from

making any comments or remarks about the nature of the evidence adduced by the prosecution as well as the criticism of the same by the accused.

7. It is now necessary to broadly state the case of the prosecution as well as the findings recorded by the learned Sessions Judge. In the village of Visadala there were two factions, one led by the 3rd accused and the other by P.W. 23, a brother of Koteswara Rao, one of the deceased. All the thirty accused belong to the party of the 3rd accused. The 2nd accused was the Sarpanch of the village and the 1st accused was the acting village Munsif at the time of the occurrence, i.e., August 16, 1968. P.W. 23 was the President of the Village Panchayat from 1956 to 1964 after which period the 2nd accused came to power. There was a multi-purpose Co-operative Society established in 1963 in the village and the members of both the factions claimed to be the President or secretary of this society. This rival claim was the subject of Writ Petitions in the High Court. The 1st accused was the acting Village Munsif at the time of the occurrence and his appointment was bitterly resented by the opposite group. All this clearly show that there was acute bitterness and rivalry between the members of the two groups.

8. The prosecution case is as follows :

On the morning of August 16, 1968, P.Ws. 5 and 6, who are brother and who had taken a land on lease for cultivation, raised a cross-bund in the canal for the purpose of diverting water to their field. Some time later, accused Nos. 2, 6 and 21 came and asked P.Ws. 5 and 6 to remove the cross-bund but they refused. The third accused left the place abusing the two witnesses. About 12 noon on the same day, P.Ws. 5 and 6 noticed that there was diminution of water in the canal. At that time Ratnababu, who was coming alongside the canal, was asked by these witnesses to plug any leakage near the cross-bund. Ratnababu accordingly was trying to close the leakage when all the thirty accused, who belonged to one faction, came to that place armed with differed weapons. The 1st accused stabbed P.W. 5 with a spear both on his chest and on his temple. The 6th accused stabbed P.W. 5 on the right palm and the right wrist. The 3rd accused beat P.W. 5 with a spear on his hand. When P.W. 6 interfered, he was stabbed with a spear on the left chest by A-27 and was also beaten on the head, back and leg by A-21. All the accused then ran towards Ratnababu, who was plugging the hole in the siphon. Ratnababu, on seeing the accused coming towards his direction, ran to the field of P.W. 23 where Koteswara Rao with his brother, P.W. 7 was working. Accused Nos. 1 to 4 stabbed Koteswara Rao on the various parts of his body with spears and after he fell down, they along with A-12, A-13, A-22 and A-23, inflicted further injuries. When P.W. 7 attempted to interfere to save his brother, he was attacked by A-14, A-19, A-24 and A-25. He was also kicked by A-20. Some of the accused turned their attention on Ratnababu. A-5, A-6, A-7, A-8 and A-10 inflicted spear injuries on Ratnababu. When P.W. 13 came to help Ratnababu, he was speared by A-18. All the accused then ran away from the place.

9. P.Ws. 1 to 4 had witnessed the entire occurrence. Koteswara Rao was removed to his house in the village and he died within a very short time. Ratnababu was taken to the Government General Hospital, Guntur, and as his condition was very serious, a dying declaration, Ext. P-15, was recorded by the Magistrate, P.W. 16, at about 8.40 p.m. the same day, Ratnababu died at 1.20 a.m. on August 17, 1968. The Magistrate had also recorded a statement Ext. P-1, from P.W. 5 and a statement, Ext. P-16 from A-30. At this stage it may be mentioned that the witnesses, who had received injuries, namely, P.Ws. 5, 6, 7 and 13 as well as some of the accused, who had received injuries, namely, A-5, A-14, A-29 and A-30, had all arrived at the Government General Hospital, Guntur, at about the same time and were treated by the same doctor. There is on record the wound certificates issued in respect of these persons. Apart from the wound certificate issued to Ratnababu,

at the time of his admission to the Hospital, there is also the description of the injuries sustained by him, as mentioned in the post-mortem certificate. There is also on record the post-mortem certificate issued to the other deceased, Koteswara Rao, which also shows that he had sustained a number of injuries.

10. Most of the accused, when they were examined under Section 342, pleaded complete ignorance about the occurrence. The 5th accused however, pleaded that on the date of the occurrence he, along with A-14 and A-30, had gone to water the field of A-30. Near the cross-bund they found P.Ws. 5 to 7, 13 and 23, the deceased Ratnababu and certain others. A-30 requested P.W. 23 to remove the cross-bund to enable him to take water to his field. On their refusal, A-30 attempted to remove the cross-bund, when at the instigation of P.W. 23 he was stabbed by one Appa Rao and also attacked by P.W. 23. P.W. 23 also beat him and ran away. A-14 stated that he was beaten at the cross-bund by P.W. 23. A-29 also pleaded that he sustained injuries at the cross-bund when he was with A-5, A-14 and A-30. A-30 also gave a somewhat similar statement.

11. Thus it will be seen that while according to the prosecution the occurrence took place in two stages, one at the place where the cross-bund was raised and the other in the field of P.W. 23, on the other hand, according to the defence, the occurrence had taken place at the place where the cross-bund was raised by P.Ws. 5 and 6 and that there was no incident whatsoever near the field of P.W. 23. The learned Sessions Judge made a local inspection of the scene of occurrence and has also noted his observations. It will be seen that according to the learned Sessions Judge the field of P.W. 23 was at a distance of 290 yards, as the crow flies, from the place of the cross-bund. He has further noted that there was a donka which was about five feet lower in level compared to the neighbouring fields and that it would not have been possible for the accused, who were at the cross-bund, to see and identify anybody who may have been near the donka.

12. The learned Sessions Judge, after a consideration of the dying declaration of Ratnababu, Ext. P-15, and other evidence, is of the view that the prosecution case of Ratnababu running from the siphon to the field of P.W. 23 and that he was chased by the accused, is improbable. It is the view of the learned Judge that the prosecution has not come forward with the truth as to how the accused, after the occurrence at the cross-bund, happened to be near the field of P.W. 23. Regarding the occurrence at the cross-bund, the court's view is that there is the evidence of only P.Ws. 5 and 6. Though P.Ws. 5 and 6 had received injuries, they have not said anything as to how accused Nos. 5, 14, 21 and 30 sustained injuries. These accused also have sustained injuries at the same time as P.Ws. 5 and 6 and at the same place, namely, the cross-bund. The prosecution has stressed as to how these accused received injuries. In view of these and other circumstances, the finding of the learned Sessions Judge is that these four accused had acted in self-defence at the incident that took place at the cross-bund by P.Ws. 5 and 6. The injuries sustained by P.Ws. 5 and 6 being of a very minor nature sustained by them when the said accused acted in self-defence, none of those accused are guilty of any offence regarding this particular incident.

13. Regarding the second stage of the occurrence at the field of P.W. 23, the trial court's view is that the witnesses, who spoke to the same, are P.Ws. 1 to 4, 7 and 13. P.Ws. 7 and 13 had received injuries. After a consideration of the evidence of P.Ws. 1 to 4, the learned judge expresses the view that they are tutored witnesses and that they have been selected because they belong to the part of P.W. 23. The learned Judge disbelieved their evidence and eschewed the same from consideration. Left with the two other witnesses, namely, P.Ws. 7 and 13, the trial court is of the view that they being interested witnesses, their evidence will have to be treated with great caution and that it would be safe to accept their evidence only if it is corroborated by other independent evidence. Ultimately

the learned Judge held that their evidence cannot be accepted regarding the attack on Koteswara Rao. Having regard to the evidence adduced in the case, the learned Judge has recorded a finding that none of the accused can be held liable for the offence of causing the death of Koteswara Rao.

14. But so far as the attack on Ratnababu was concerned, the learned Judge took into account the evidence of P.Ws. 7 and 8, the medical evidence as also the dying declaration, Ext. P-15, and convicted accused Nos. 5 to 7, 14, 18, 19, 24 and 25 in the manner mentioned by us earlier. The learned Judge has also given reasons as to why some of these accused are not guilty of the other offences with which they were charged and also for acquitting the rest of the twenty-two accused. The learned Judge has also given the reasons for convicting some of the accused only under Sections 323 and 324. The learned Judge's further view is that though certain charges had been framed, read with Section 34 or alternatively with Section 149, in the manner in which the incident has ultimately been found to have happened, there is no scope for making any of the accused constructively liable under these provisions.

15. We have already mentioned that it is only the convicted eight accused, who had filed different appeals before the High Court challenging their conviction. The State had not filed an appeal under Section 417 of the Criminal Procedure Code, either challenging the acquittal of these eight accused of the other offences or against the acquittal of the remaining twenty-two accused of all the charges. We are particularly mentioning this aspect because if the State had filed such an appeal, the nature of jurisdiction exercised by the High Court will be entirely different. On the other hand, it was the brother of one of the deceased, namely, P.W. 7, who had filed as a private party, a Criminal Revision challenging the complete acquittal of the twenty-two accused as well as the acquittal of the eight convicted persons of the other charges.

16. After a review of the earlier decisions, the extent of the jurisdiction of the High Court in the matter of interfering in revision against an order of acquittal has been laid down by this Court in *K. Chinnaswamy Reddy v. State of Andhra Pradesh* ((1963) 3 SCR 412 : AIR 1962 SC 1788 : 1963 Cri LJ 8.), as follows :

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be; where the trial court has jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be

inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4)."

The above principles have also been reiterated in *Mahendra Pratap Singh v. Sarju Singh & Another* ((1968) 2 SCR 287 : AIR 1968 SC 707 : (1968) 2 SCJ 193.), *Khetrabasi Samal etc. v. State of Orissa etc.* ((1970) 1 SCR 880 : (1979) 2 SCC 571.) and *Amar Chand Aggarwalla v. Shanti Bose and Another, etc.* ((1973) 4 SCC 13 : 1973 SCC (Cri 651).)

17. We have, therefore, to see whether the order of the High Court setting aside the order of acquittal of the eight convicted accused of certain charges as well as the acquittal of the remaining twenty-two accused of all the charges can be upheld on the above principles. The High Court has admittedly not considered the grievance of the eight convicted accused in their Criminal Appeals Nos. 201 and 202 of 1969. A perusal of the judgment of the High Court shows it has mainly dealt with the Criminal Revision filed by the private party. In that context, it has considered the material evidence in some detail and has practically expressed an opinion against the accused in some respects. It has practically given a finding that all the thirty accused will have to be convicted under Section 302, read with either Section 149 or at any rate Section 34. It has held that the dying declaration of Ratnababu Ext. P-15, is admissible even regarding the attack on the other deceased, Koteswara Rao. The High Court has also expressed its opinion that Ext. P-15 establishes, on the facts of the present case, that accused Nos. 1 to 4 attacked Koteswara Rao and caused his death. The High Court's view also appears to be that the search of corroboration made by the trial court regarding the evidence of some of the prosecution witnesses was unnecessary. Even some of the convicted accused should have been convicted for more serious offences. More or less on this reasoning, the High Court remanded the entire case for retrial.

18. We are of the opinion that the entire approach made by the High Court in dealing with the Criminal Revision filed against acquittal by the private party is contrary to the principles laid down in the decisions referred to above. Notwithstanding the fact that sub-section (4) of Section 439 does not authorise the High Court to convert a finding of acquittal into one of conviction, it has in fact contravened this provision by recording a finding of guilt against the accused and directing the trial court to convict them after a retrial. There is no question of lack of jurisdiction in the trial court to try the case; nor was any attack made that any evidence has been shut out at the trial. Whether the dying declaration, Ext. P-15, by Ratnababu can be taken into account regarding the attack on Koteswara Rao, is a matter which the trial court was entitled to decide one way or the other. If its view was wrong, the High Court could have gone into that aspect and differed from this opinion of the Sessions Court if the State had filed an appeal against acquittal. Further the mere fact that the learned Trial Judge held that this piece of evidence is not relevant, while considering the attack on Koteswara Rao, does not amount to shutting out of evidence at the trial. In fact that evidence has already come on record. Therefore, in this case there has been no shutting out at the trial of any evidence which the prosecution wanted to adduce or the defence wanted to lead. All available evidence has been let in by both the prosecution and the accused.

19. Nor can it be stated that there has been any glaring defect in the procedure or a manifest error on a point of law and consequently leading to a flagrant miscarriage of justice. As mentioned earlier,

sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction by an indirect method of ordering retrial when the High Court itself cannot directly convert a finding of acquittal into a finding of conviction. The High Court, in our opinion, has missed these very important limitations on its power to set aside the finding of acquittal in revision which could be done only in very exceptional circumstances. In the case on hand, the High Court was not justified in considering the evidence in such detail if it was really going to order a retrial. Such a detailed consideration of evidence and an expression of opinion about the guilt of the accused, in our opinion, has really loaded the dice against the accused when the case goes back for retrial. Much stress had been laid by the High Court though substantive charges had been framed against the accused, read with Section 34 or alternatively with Section 149, I.P.C. the trial court has not recorded any finding in this regard. Here again, the High Court's view is erroneous. We have already referred to the finding recorded by the trial court that in view of the definite case of the prosecution and the nature of the evidence, none of the accused can be held constructively liable. It is on that ground that the trial court has not found the accused constructively guilty.

20. We have indicated the reasons, which promoted the High Court to order a retrial. The consequence of this will be to put considerable strain on the accused who have already gone through a trial at considerable stress and expense. After going through the judgment of the learned Sessions Judge, we cannot certainly say particularly in view of the evidence on record, that either the acquittal of the twenty-two accused or the acquittal of the eight convicted accused of the rest of the charges was not justified. At any rate, it may be safely stated that the learned Sessions Judge has taken into account all the relevant circumstances. It may be that there are slight mistakes in some of the reasons given by him but the judgment as a whole shows that he has really applied his mind to the various pieces of evidence before passing the order of acquittal in the manner he has done. In the particular circumstances of this case, the interference in revision by the High Court at the instance of the private party was not justified. The two appeals filed by the convicted accused, namely, Criminal Appeals Nos. 201 and 202 of 1969 have not been dealt with by the High Court on merits. The appellants therein have a right to have those appeals heard and disposed of by the High Court according to law.

21. In the result, Criminal Appeal No. 173 of 1970 is allowed and the judgment and order of the High Court in Criminal Revision Case No. 727 of 1969 are set aside and the said Criminal Revision will stand dismissed. Criminal Appeal No. 174 of 1970 is also allowed and in consequence Criminal Appeals Nos. 201 and 202 of 1969 filed by the eight accused are remanded to the High Court for hearing and disposal according to law.

</html