

SUPREME COURT OF INDIA

Devatha Venkataswamy

Vs.

Public Prosecutor, High Court of A. P.

Crl.A.No.674 of 2002

(N. Santosh Hegde and B. P. Singh JJ.)

09.09.2003

JUDGEMENT

Santosh Hegde, J.

1. Thirty-five accused including the appellant herein were charged for offences punishable under Sections 302, 147, 149 and 304, IPC for having committed the murder of one Krishnaiah on 28-7-1988 at about 7 a.m. near the Ram Mandir (Temple) at Palachuri village. The learned Sessions Judge, Nellore Division, Nellore, by his judgment dated 18-5-1999 acquitted all the accused persons of the charges framed against them holding that the prosecution had failed to establish its case. In appeal the High Court of Judicature Andhra Pradesh at Hyderabad by the impugned judgment came to the conclusion that A-1 (since deceased) and A-2 (the appellant herein) were responsible for causing the death of deceased. The High Court also held that A-3 was responsible for causing injuries to P.W. 1. Since by then A-1 had died, the proceedings against him had abated, therefore, the High Court convicted A-2 for an offence punishable under Section 302 simpliciter and sentenced him to undergo imprisonment for life while A-3 was convicted by the High Court for an offence punishable under Section 324, IPC, the said A-3 has not challenged his conviction and sentence, so the present appeal before us is confined to A-2 only.

2. Brief facts necessary for the disposal of this appeal are as follows:

“It is stated that there were two sub-castes of Harijans residing in Palachuru village, who had certain disputes inter se between them. One such group consisting of 35 accused was led by A-1 allegedly attacked the deceased on 28-7-1988 at about 7 a.m. near the Ram Mandir in the said village. In the said attack, the deceased Krishnaiah was seriously injured while P.W. 1 was also injured. The incident in question was noticed by P.Ws. 1, 3, 4 and 7. While P.Ws. 5, 6 and 11 allegedly arrived at the scene soon after the attack. The information in regard to this attack was received by the Mandal Revenue Officer, P.W. 14 who conveyed the said information to P.W. 21, the Sub-Inspector of Police, Palachuru, who immediately visited the scene of the incident and shifted the injured to the hospital at Gudur. In view of the fact that the deceased

was seriously injured he was shifted to Madras Medical College Hospital at Madras. P.W. 1 also arranged to record the statement of the said deceased in the hospital which is marked as Ex. P-21. It is stated that said Krishnaiah died on 3-8-1988, hence, Ext. P.-21 was treated as a dying declaration. After completion of investigation, P.W. 21 filed a charge sheet against 35 accused persons including the appellant herein. The trial Court, as stated above, acquitted all the accused persons but on appeal preferred by the State the High Court has convicted the appellant herein for an offence punishable under Section 302, IPC.”

3. Ms. K. Sarada Devi, learned counsel appearing on behalf of the appellant contended that the High Court seriously erred in reversing the well-considered judgment of acquittal of the trial Court. She submitted that from a perusal of the judgment of the High Court it can be seen that the High Court has not properly discussed the findings of the learned Sessions Judge nor has it given any acceptable reason for disagreeing with the findings of the trial Court. She also contended that a perusal of the evidence of eye-witnesses clearly shows that the said evidence cannot be relied on for basing a conviction as held by the trial Court.

4. Ms. T. Anamika, learned counsel appearing for the State of Andhra Pradesh supported the judgment of the High Court by contending that the evidence led by the prosecution was consistent, and P.W. 1 being an injured eye-witness, his evidence cannot be discarded. She also submitted that the evidence of P.W. 1 is fully corroborated by the other evidence led by the prosecution, hence, there is no reason for this Court to interfere with the well considered judgment of the High Court.

5. It is a well-settled principle in law that though the first appellate Court like the High Court in this case sits as a court of appeal on facts also while considering an appeal from the judgment of the trial Court and in that process it can re-appreciate the evidence on record to arrive at a just conclusion, this Court in more than one case has held that while so re-appreciating the evidence, the appellate Court should first analyse the finding of the trial Court and then for valid reasons to be recorded the appellate Court can reverse such finding of the trial Court. The said decisions also hold that the appellate Court while sitting as a court of appeal should not substitute the finding of the trial Court merely because another view is possible to be taken on the same sets of facts. (See *Rajendra Prasad v. State of Bihar*¹, *Harisingh M. Vasava v. State of Gujarat*² and *Joseph v. State of Kerala*³).

6. Bearing in mind the above principles in law, we will now consider whether the High Court is justified in this case in interfering with the finding of the trial Court which had acquitted all the accused persons. A perusal of the judgment of the High Court shows that it had discussed the evidence led by the prosecution in a very casual manner. For example, in regard to the evidence of P.W. 1, this is what the High Court observed:

"As far as the attack on P.W. 1 is concerned, the deceased while giving the first information Ex. P21 gave the details of the offence. P.W. 1 himself attributed specific overt acts against A3, A4, A6, A7 and A8 and whereas P.W. 10 has also attributed

overt acts of attacking P.W. 1 to A2 and A3. It is supported by the medical evidence. But the injuries were simple in nature and therefore they are ignored."

7. We do not find from the above observation of the High Court that it has taken into consideration the various omissions and contradictions found in the evidence of PW. 1.

8. Having perused the evidence of P.W. 1 in its entirety as also the medical evidence, we are not in a position to agree with the High Court in regard to the acceptability of the evidence of P.W. 1. First of all, it should be noticed that in the above extracted portion of the judgment, the High Court has observed that the evidence of P.W. 1 is supported by the medical evidence but when we perused the evidence of the doctor, P.W. 16 as also the injury memo and post mortem report, we notice there is a direct conflict between the evidence of P.W. 1 and the medical evidence. While P.W. 1 in his evidence before the Court stated that the appellant pierced the forehead of the deceased Krishnaiah once. The medical report shows that the injury caused to the forehead of the deceased was by the use of a blunt weapon and that too by repeated blows. Therefore, the High Court was totally wrong in coming to the conclusion that the medical evidence supported the oral evidence of P.W. 1. That apart, the High Court failed to notice certain other material omissions and contradictions in the evidence of P.W. 1. First of all it should be noted that P.W. 1 on his own admission is a person who has paralysed legs for the last 20 years and was unable to move on his own. It is his case that when he heard some "galata" he went from his house to the place of incident which was about more than one furlong away from his house. He did not state in his evidence who actually helped him to go to the said place of incident. In the cross-examination this witness has admitted that he had stated before the police that due to old age he could not identify all the culprits. He has also admitted in the cross-examination that when his statement under Section 161 was recorded he did not state before the police that the appellant herein had attacked him, but in his oral evidence before the Court he has made improvement in his evidence, while identifying all the accused persons as also while stating the appellant herein also attacked him. At this stage it is also relevant to mention that in Ex. P-21, the dying declaration of the deceased presence of none of these witnesses including that of P.W. 1 is mentioned. The only person who is stated to be a witness to the incident as per the dying declaration Ext. P-21 is P.W. 12 who has not spoken anything about the attack by the appellant herein either on the deceased or on P.W. 1. It is on consideration of all these facts and also taking into consideration the conflict between the evidence of P.W. 1 and medical evidence the trial Court rejected the evidence of P.W. 1. In our opinion, the High Court has not taken into consideration these important facts while accepting the evidence of P.W. 1. We are aware of the fact that P.W. 1 is an injured witness and normally the presence of such a witness at the time of incident can be inferred if the injuries are suffered in the course of same incident. But in the instant case, we are unable to place any reliance on the evidence of P.W. 1 because on his own admission in the cross-examination because of poor eye sight he was not able to identify all the accused persons. That apart it has come in the evidence that so far as this witness is concerned he was actually attacked not at the place of occurrence, namely the Ram Mandir where the deceased was attacked, but in front of the house of one Yellampali Peda Polaiiah which is at a considerable distance from the Ram

Mandir where the deceased was attacked. Taking into consideration these facts, we are of the opinion that the trial Court was justified in rejecting the evidence of P.W. 1.

9. The prosecution has then relied on the evidence of P.W. 3 and P.W. 7 to establish the fact that it is the appellant herein who pierced the forehead of the deceased with a spear. We have already noticed the fact that the injury attributed to this appellant to the forehead of the deceased could not have been caused by a sharp edged or pointed weapon like spear and it is on that basis among other facts we have rejected the evidence of P.W. 1. For the very same reason, we think it is not safe to place reliance on the evidence of these two alleged eye-witnesses. The evidence of P.W. 4, as a matter of fact, does not support the prosecution at all because according to him it is A-3 and not A-2 who pierced the head of the deceased with a spear. So far as other witnesses examined by the prosecution are concerned, namely, PWs, 5, 6, 10 and 11, they are all witnesses who arrived at the place of incident after the attack was over, therefore, their evidence will not support the prosecution case any further. Only other alleged eye-witness P.W. 2 has not supported the prosecution case.

10. From the above discussion of the evidence led by the prosecution in the case in hand, we are satisfied that the High Court fell into an error in reversing the judgment of the trial Court. Therefore, this appeal succeeds and the same is allowed. The judgment of the High Court is set aside, the conviction and sentence imposed on the appellant are set aside. The appellant shall be set at liberty forthwith, if not required in any other case.

Appeal allowed.

¹(1977) 2 SCC 205)

²(2002) 3 SCC 476)

³(2003) 1 SCC 465)