NAYUDU SRIHARI

v.

STATE OF ANDHRA PRADESH

AUGUST 23, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

CRIMINAL LAW :

Indian Penal Code, 1860—Section 302—Appellant alongwith 14 others accused of murder of a person belonging to rival faction—Appellant alleged to have attacked deceased on his neck repeatedly—FIR by PW 1 admittedly after consultation with his leader—Giving names of 15 persons belonging to rival faction with names of their fathers—During trial PW 1 could identify and name only a few of them—Held : FIR fabricated.

Statement of PW 1 as to his presence—Contrary to evidence of his parents—No reason to discard their evidence. Presence of PW 1 at the scene—Improbable. Conviction based on sole testimony of PW 1—Cannot be sustained.

Constitution of India, 1950 : Article 136—Jurisdiction—Concurrent findings of fact—Held, ordinarily not disturbed—However finding based on evidence of sole witness, ignoring or overlooking relevant facts having bearing on credibility of witness—Reversed.

Appellant and fourteen others were tried for offences punishable under Section 148, 302, 302/149 and 302/114 IPC. Prosecution case was that there were two rival groups in the village, one headed by V and the other by A-13. Six months prior to the incident, C, belonging to the faction of A-13 was murdered and in that case the deceased in the instant case was an accused. On the date of the incident, the deceased and his co-brother, PW-1 were in the house of the deceased. At about 2 a.m. A1, belonging to rival party of A13, came there and asked the deceased to help him in some field work. He agreed and left with A1 for the field work, and PW 1 also accompanied them as he intended to return to his village. When they reached the place of occurrence, PW 1 saw A3, A4, A7 and A13 of rival party sitting there. On seeing the deceased, the Appellant asked his associates to attack him. A3 and A4 gave him a blow each with their knives. When he fell down, the appellant hacked him on his neck with a knife and other accused started

A assaulting him indiscriminately with weapons. PW 1 ran away and after sometime reported the incident to the parents of the deceased. PW 1 then went to meet the leader of his faction, V, got the FIR drafted from V and then lodged an FIR with the Police. In the FIR PW 1 mentioned the names of all the 15 accused from the rival faction as also the names of their fathers.

B

Trial Court did not accept the defence version that since the accused party belonged to the rival group, they were falsely implicated. It found the testimony of PW 1 trustworthy and convicted the appellant, arrayed, as A2, and three others, namely, A1, A3 and A4, under Section 302 IPC. Others

C were acquitted.

On appeal, the High Court also relied upon the evidence of the PW 1. It however, altered conviction of A3 and A4 to Section 304 (Part II) IPC and acquitted A1. The conviction of Appellant under Section 302 IPC was confirmed. Hence this appeal.

D

Allowing the Appeal, this Court

HELD : 1. Ordinarily this Court, while exercising its jurisdiction Under Article 136 of the Constitution, does not disturb concurrent finding of fact or re-appreciate and reassess evidence, unless the finding of the

E Courts below has resulted in grave miscarriage of justice. But where concurrent findings have been recorded by the Courts below on testimony of a witness, ignoring or overlooking other relevant facts and circumstances which have a bearing on the credibility of such witness, it is the duty of this Court to re-appraise the evidence and interfere with the finding, as

F in the present case. [121-G-H; 122-A]

2.1. The FIR lodged by PW-1 was fabricated. The fact that PW 1 had met V, the leader of his faction prior to lodging the FIR, and the fact that PW-1 had given the names of 15 accused belonging to the rival faction, as also the names of their fathers in FIR but named only a few during trial

G trial leads to the conclusion that the FIR was at the instance of V. [122-B-E]

2.2. Since the accused belonged to the rival group headed by A-13 while PW-1 belonged to the group lead by V, the names of the accused were falsely included in the FIR. [122-E-F; H]

H 2.3. The evidence of PW-1 that the deceased left his house on the

request of A1 cannot be accepted, since only a few months prior to the incident the deceased had been arraigned for the murder of a member of the rival group to which A1 and A13 belonged and this group was waiting for an opportunity to kill him. [123-B; D]

2.4. Claim of PW 1 that he was in the house of the deceased on the fateful night is belied by the contrary evidence of his parents who asserted that PW 1 was in his own house on the night of the incident. In the absence of cogent and convincing reasons why the parents of PW 1 would falsely controvert the assertions of their own son, their testimonies cannot be rejected. Hence, the further evidence of PW-1 that he accompanied A1 and the deceased to go to his own village is also suspicious. [123-E-F; 124-B-C]

2.5. The evidence of PW 1 deserves to be discarded since if he was present when the murder took place, he would not have been spared by the accused who were 15 in number and armed with deadly weapons, more so since PW 1 was from the rival group. [124-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 7 of 1993.

From the Judgment and Order dated 20.3.1992 of the Andhra Pradesh High Court in Criminal Appeal No. 647 of 1991.

K. Madhava Reddy and D. Prakash Reddy for Ms. Rani Chhabra for the Appellant.

Guntur Prabhakar for the Respondent.

The Judgment of the Court was delivered by.

M.K. MUKHERJEE, J. Nayudu Srihari, the appellant before us, and fourteen others were tried by an Additional Sessions Judge of Machilipatnam for offences punishable under Sections 148, 302, 302/149 and 302/114 IPC. The trial ended in conviction of the appellant and three others (who were arrayed as A2, A1, A3 and A4 respectively) and acquittal of the rest. While the appellant along with A3 and A4 was convicted under Section 302 IPC (simpliciter), A1 was convicted under Section 302/114 IPC. In appeal preferred by them the High Court acquitted A1, altered the conviction of A3 and A4 to Section 304 (Part II) IPC and affirmed that of the appellant. Thereafter the three convicts filed a petition before this Court seeking special leave to appeal against the judgment of the High Court but

A such leave was granted to the appellant only.

2(a) Briefly stated the prosecution case is that all the accused persons and K. Nagulu (the deceased) hailed from village Nali in the district of Krishna. The residents of Nali were divided into two rival groups, one of which was headed by K. Venkataramaya and the other by A13 (since
B acquitted). About six months prior to the incident, with which we are concerned in this appeal, one Chapala Somaiah, who belonged to the party of A-13, was murdered. In that case Nagulu was one of the accused. Since then the followers of A-13 were waiting for an opportunity to kill him.

C (b) On November 18, 1988 Nagulu and his co-brother Viswanadhapalli Bhiksham (P.W.1), who was a resident of village Sangameswaram, which was at a distance of 3 kilometers from village Nali, went to the field of the former to drain out the excess water and spread pesticides. After completing their work they returned to the house of Nagulu and after
D taking their food went to sleep. At or about 2.00 A.M. A-1, who belonged to the party of A-13, went to the house of Nagulu, woke him up and asked him to come along with him for doing some work in the field. Nagulu then woke up P.W.1 and told him that he was going along with A-1. P.W.1 when told him (Nagulu) that he would also depart for his village. Accordingly all three of them left the house. When they reached the field of one Nayudu
E Paramesu, P.W.1 saw the appellant, A-3, A-4, A-7 and A-13 sitting there. On seeing Nagulu the appellant asked his associates to assault him. Then A-3 and A-4 gave him one blow each with their respective knives. When Nagulu fell down on being so assaulted, the appellant hacked him on his neck with a knife. Inspite of the entreaties of P.W.1 not to kill Nagulu, the
F other accused persons started beating him indiscriminately with the weapons they were carrying. On seeing such assault on Nagulu, P.W.1 ran away from the place. When A3, A6, A7 and A8 chased him, P.W.1 ran towards the sea and hid himself in a grove. After some time, he went to his village and from there to village Nali, where he reported the incident to the parents of the deceased and D. Durgarad (P.W.6) and K. Sankararao
G (P.W.7). He then went to meet Venkataramaya, the leader of their faction, and got the report, which was to be lodged with the police, drafted by him, P.W.1 then went to the police station at Nagayalanka and lodged the report.

H (c) On that report (Ext. P.1) a case was registered and Inspector N.

Krishna Murthy (P.W.12) took up investigation. He visited the scene of occurrence, held inquest upon the dead body of the deceased and sent it for post mortem examination. He then prepared a site plan and seized some blood stained earth from the spot. On completion of investigation he submitted charge-sheet against the fifteen accused persons and in due course the case was committed to the Court of Session.

3. The accused persons pleaded not guilty to the charges levelled against them and their defence was that they had been falsely implicated as they belonged to the group rival to that of P.W. 1 and the deceased.

4. In support of their respective cases, the prosecution examined twelve witnesses and the defence four.

5. That Nagulu met with his death owing to a murderous assault stands conclusively proved by the testimonies of the Investigating Officer (P.W. 12), who held inquest upon his dead body and Dr. M. Ranganadha Babu (P.W. 11), who performed the autopsy and found as many as 27 injuries of different nature and dimensions spread all over the body of the deceased. He opined that the deceased died of shock and heammorhage caused by injuries to spinal cord, neck vessels and fracture. Indeed this part of the prosecution case was not seriously challenged by the defence.

6. The crucial question that now falls for our determination is whether the prosecution has succeeded in conclusively proving that the appellant committed the murder. To prove this part of its case the prosecution relied solely upon the ocular version of P.W. 1. Both the learned Courts below found the evidence of P.W. 1 trustworthy and as, according to P.W. 1, the appellant had inflicted the blows on the neck of Nagulu, recorded their respective findings against the appellant.

7. Ordinarily, this Court while exercising its jurisdiction under Article 136 of the Constitution of India does not disturb concurrent findings of fact and, for that matter, reappreciates and reassesses the evidence unless it is of the opinion that the approach of the learned Courts below in arriving at such findings has resulted in grave miscarriage of justice. To put it differently, if this Court notices that concurrent finding of fact has been recorded by the trial Court and the appellate Court on the testimony of a witness, ignoring or overlooking other evidence and attending facts and circumstances which have an important bearing on the credibility of such

A a witness, it becomes the duty of this Court to reappraise the evidence, and interfere with such finding if the interest of justice so requires. Judged in the above context the instant case, in our opinion, calls for such interference.

B 8. Coming first to the FIR that P.W. 1 lodged, we find that therein he not only the names of all the fifteen persons who, according to him, committed rioting and the murder, but also the names of their respective fathers. In his testimony, however, P.W. 1 only named and identified seven of them, including A-1 to to A-4 and A-13, as the miscreants. Further when in his cross examination, P.W. 1 was asked as to whether he knew the C names of the fathers of all the accused persons and whether he had given their names in the FIR, he stated that he knew the fathers' names of half of the accused persons and that he did not remember if he had given the names of the fathers of the accused persons in the report he lodged with the police. From the failure of P.W. 1 to name and identify eight of the D accused persons during trial and his admission in cross examination that he knew the fathers' names of some of the accused persons, the only reasonable conclusion that can be drawn is that he furnished those names in the FIR at the instance of some other person, and that person can only be Venkataramaya, the leader of their faction, for P.W. 1 admitted that he (Venkataramaya) wrote down the FIR. Obviously, to rope in members of E their rival group to which the accused persons belonged that a garbled version relating to the murder of Nagulu was furnished to the police through the FIR. In arriving at the above conclusion we have drawn support from the fact that instead of going directly to the Police Station after informing the parents of the deceased, P.W. 1, admittedly, went to F the leader of his group to get the report, which he was to lodge at the Police Station, drafted. From the impugned judgment we, however, find that the High Court did not consider this aspect of the matter from a proper perspective event though the High Court's attention was specifically drawn to it. Indeed, the comment the High Court made in this regard is that P.W. 1 might have forgotten the names of all the accused persons as G he was testifying in Court two years after the incident. The other comment is that the mere fact that he gave the names of fifteen accused persons in the FIR but did not depose about all of them, could not be a circumstance to indicate that the report is the manipulation of their leader. Apart from the fact that the High Court did not deal with the question as to how H father's names of all the accused persons found place in the FIR, we find

that the above comments of the High Court are based on wrong reading of the evidence of P.W. 1 who in his deposition had earlier testified that he knew all the accused persons and that he could identify them. A

9. From the evidence of P.W. 1 we further notice that A-1 had come at or about 2.00 A.M. to call Nagulu to go along with him for doing some earth work and on being so asked, Nagulu left with A-1. We find it difficult to accept the above version of P.W. 1 for, admittedly, A-1 was a member of the faction rival to the deceased and, therefore, it was unlikely that Nagulu would immediately respond to the request of A-1 and accompany him for doing the earth work, and that too at that unearthly hour. Obviously, to meet such a contention, if raised, it was stated by P.W.1 that though A-1 belonged to his rival group, still he continued to be his friend and this statement of P.W. 1 found favour with both the learned Courts below. The learned Courts below, however failed to consider the other relevant evidence on record that only few months prior to the incident, the deceased had been arraigned for the murder of a member of the group to which A-1 and A-13 belonged and that this group was waiting for an opportunity to kill Nagulu. Considered in the background of such enmity, P.W.1's claim that the deceased still continued to be a friend of A1 was clearly a tall one. Rather, it appears to us that a call at such unearthly hour by A-1 would have certainly put Nagulu on guard and he would not have ventured to accompany him. We, therefore, feel hesitant to accept the evidence of P.W. 1 that the deceased left his house on the request of A1. Resultantly, P.W.1's further evidence that as he was present in the house then, he also accompanied them to go to his own village becomes also suspicious. B C D E

10. The claim of P.W. 1 that he was in the house of Nagulu on the fateful night, that he accompanied him and that he witnessed the incident, is also belied by the evidence of his parents who were examined as DW-1 and DW-2, both of whom asserted that in the night in question he (P.W. 1) was in his house in village Sangameswaram and that of DW-3, who testified about his presence in her (D.W.5's) shop at village Sangameswaram on the following morning, when, according to P.W. 1, he was in village Nali. The Trial Court discarded the evidence of the above three defence witnesses solely on the ground that they were partisan witnesses. If the evidence of a witness was to be discarded - without discussing it - solely on the ground that he was a partisan witness, the trial Court ought not to have then relied upon the evidence of P.W. 1 who was also a partisan F G H

A and interested witness, as he belonged to the group rival to that of the accused persons. So far as the criticism of the High Court in this regard is considered, we find that it did not at all consider the evidence of DW-3; and rejected the evidence of DW-1 and DW-2 merely on the ground that as P.W. 1 was living in a separate house, their evidence was highly artificial and, therefore, no reliance could be placed on it. The High Court, however, B did not spell out the reasons which prompted it to make such an observation. On the contrary in the absence of any cogent and convincing reason as to why they would falsely controvert the assertions of their own son that he was in the house of Nagulu in the night in question, we are unable to reject their testimonies. It is of course true that both the witnesses testified C that P.W. 1 was having a separate house but their evidence proves that they were living in adjacent houses.

11. The other reason which prompts us to discard the evidence of P.W. 1 as improbable is that if really he was present when the murder took place, he would not have been spared by the accused persons and were D fifteen in number and were armed with deadly weapons, more so when he was a member of the rival group. Unfortunately, all these aspects were not considered by the learned Courts below from a proper perspective.

12. For the foregoing discussion we are unable to uphold the conviction of the appellant under Section 302 IPC for the murder of Nagulu. We, E therefore, allow this appeal, set aside the impugned judgment and acquit the appellant. The appellant, who is in jail, be released forthwith unless wanted in connection with any other case.

S.K. Appeal allowed.