GAMINI BALA KOTESWARA RAO & ORS. A

v.

STATE OF A.P. THR. SECRETARY

(Criminal Appeal Nos. 634-635 of 2008)

AUGUST 19, 2009

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[HARJIT SINGH BEDI AND DR. B.S. CHAUHAN, JJ.]

PENAL CODE, 1860

ss.. 302 and 148 – Murder – Mandal Parishad elections C *– About 20 persons hurling stones and attacking one of the candidate and his nephew (PW-1) – Death of the candidate – Accused A-1 to A-3 attributed specific roles in causing stone and knife injuries to deceased – Trial court termed eye witnesses as an interested witness and a chance witness and* D *held oral testimony to be in variance with medical evidence – Acquittal of all the accused – High Court setting aside acquittal of A-1 to A-3 – Held: Presence of both the eye-witnesses at the scene of occurrence was absolutely natural – As regards the injuries on the victim, out of eight injuries, 5* E *were attributed to the three accused and three injuries remained unexplained – However, this circumstance alone would not destroy the flow of other evidence – It is clear that the incident had happened in the course of the Mandal Parishad Elections with several people being involved and a large group of spectators being present at the spot – In this* F *scenario it would have been well nigh impossible for any witness to have given a mathematical or precise description of all the injuries that had been caused and that too in a melee – The fact remains that the injuries found on the dead body* G *correspond fully with the weapons that had been used – Thus, the medical evidence does not in any way contradict the ocular evidence – So far as the so-called improvements/ inconsistencies, in the statements given by the two eye witnesses to the police* **vis-a-vis** *their statements in court are*

A *concerned, it must be emphasized that the incident happened in the year 1995 whereas the evidence was recorded after about 8 years – Some discrepancies are, therefore, bound to occur – It is clear from the FIR lodged by PW-1 and his statement in court that PW-5 was present at the time of the*
B *incident – The other discrepancies that have been pointed out are to no avail keeping in view the over all picture – High Court was fully justified in interfering in the matter and was well within its jurisdiction to do so – Evidence – Testimony of related witness – Minor variance in medical evidence and ocular*
C *version – effect of.*

APPEAL:

Appeal against acquittal – Held: It is open to High Court to re-appreciate the evidence and conclusions drawn by trial
D *court when the judgment under appeal is perverse – Word 'perverse' in terms as understood in law would mean 'against the weight of evidence'.*

WORDS AND PHRASES:

E *Word 'perverse' – Connotation of.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 634-635 of 2008.

F From the Judgment & Order dated 02.11.2007 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1280 of 2005 and Criminal Revision Case No. 1622 of 2004.

L.N. Rao, G. Ramakrishna Prasad, S. Byrapaneni and Amar Pal for the Appellants.

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D. Ramakrishna Reddy, D. Bharathi Reddy and Anuradha for the Respondents.

The following Order of the Court was delivered

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ORDER

This appeal by way of special leave arises out of the following facts:

On 6th March, 1995 Mandal elections were to be held in village Gadiparthivaripalem. Two of the candidates contesting the election were the deceased Soodidela Satyanarayana Reddy and Mandap Venkateswarlu, one of the accused (A.6).

At about 7.00 a.m. the deceased was standing along with PW.1 his nephew, Soodidela Bapireddy, in front of the polling station, when all the accused, 20 in number, armed with lethal weapons such as axes, knives, sticks and stones attacked him. A.1 Kotesswara caught hold of the deceased by his hair and gave two blows with a stone on his forehead and also stabbed him with a knife on his chest, A.2 Hanumantha Rao and A.3 Krishniah who were both armed with axes caused injuries on the back of the head of the deceased whereafter A.1 again stabbed the deceased on his shoulder.

On receipt of the injuries the deceased fell to the ground. The accident was witnessed by Pw.1 and in addition by PW.5-Pambha Soubhagyamma, a vegetable hawker. PW.1 raised an alarm whereupon PW.6 and PW.7, Soodidela Subbamma and Soodidela Vijaylakshmi, rushed and found that the victim was bleeding from serious injuries. They attempted to move him towards his house but he passed away after a short while. The other accused A.4 to A.20 thereafter hurled stones on the witnesses including PW.1 and PW.5 causing one simple injury with a stone on the back of PW.1. PW.12 and PW.16 an ASI and Head constable, who were on polling duty in the village, also rushed to the spot and saw the accused throwing stones at the opposite party. PW.12 too identified the accused at that stage. Certain other witnesses later rushed to the place and found the deceased and PW.1 lying there with injuries. Information was also sent to PW.22 the Sub-Inspector of Police, Chimakurthy, who rushed to the village and recorded the

A PW.1's statement and the First Information Report was registered on its basis at the police station at about 11.30 a.m. PW.23 the Inspector of Police, Ongole, Rural Circle, thereafter took up the investigation and visited the scene of occurrence and, amongst other items, seized the stone allegedly used by B A.1 in the attack on the deceased. He also dispatched the dead body for its post-mortem examination. The post-mortem revealed the presence of eight injuries on the dead body. Several other doctors (PWs. 14,15&19) also treated PW.1 and PWs. 2 to 4 and gave them wound certificates for the injuries C they had allegedly suffered. On the completion of the investigation all the accused were charged under Sec.148 of the IPC, A1 to A3 were charged under Sec.302 of the IPC and the others under Sec.302 read with 149 IPC and under Sec.324 of the IPC. They all pleaded not guilty and were brought to trial.

D The prosecution, in support of its case, placed reliance on several witnesses but we are at this stage concerned primarily with the evidence of PW.1 and PW.5 the two eye witnesses. On completion of the prosecution evidence the statements of the accused were recorded under Sec.313 of the Cr.P.C. They E pleaded false implication. Some documents in evidence were also tendered by the accused.

The trial Court in its judgment dated 5/9/2003 held that PW.1 the nephew of the deceased was an interested witness, F whereas PW.5 happened to be present at the place of incident by chance as she belonged to another village and was a vegetable hawker by profession. The Court observed that in this view of the matter it was essential that some corroboration be sought on account of the very nature of the evidence of these two witnesses. The Court then went into the medical evidence G and found that the same did not support the ocular evidence inasmuch the injuries found on the dead body did not correspond to the injuries referred to by the eye witnesses as the number of injuries sustained by the deceased were eight in number as per the post mortem certificate Ext. P.2, but the H

evidence of PW.1 and PW.5 referred to only five injuries caused by the three accused i.e. A.1 to A.3. The Court accordingly concluded that the genesis of the incident had been suppressed and that apparent inconsistencies had occurred in the eye witnesses account vis-a-vis the medical evidence and as these omissions/inconsistencies went to the root of the matter the evidence of these two witnesses could not be accepted. The Court further found that the evidence with regard to the accused other than A.1 to A.3 was even more unacceptable and, having held as above, acquitted all the accused. The State thereupon took the matter to the High court in appeal. The High Court held that the eye witnesses account of PW.1 and PW.5 fully corresponded with the medical evidence; that the presence of the two witnesses had been fully explained and that the so called improvements and inconsistencies referred to by the trial Judge in the course of its lengthy judgment, were innocuous and did not go to the root of the matter and could, therefore, be ignored and having held so (and calling the judgment of the trial Court qua A.1 to A.3 as perverse) partly allowed the appeal and convicted them but confirmed the judgment of the trial Court with respect to the other accused. A.1 to A.3 are before us by way of special leave.

Mr. L.N.Rao, the learned senior counsel for the three appellants has first and foremost pointed out that the High Court was dealing with the matter as an appeal against acquittal and in the light of the settled position in law if two views on the evidence were possible the view taken by the High court in favour of an accused, should not have been disturbed and that interference with a finding of fact save in exceptional cases was not justified. The learned counsel has placed reliance on (*Ram Chander and Others vs. State of Haryana*) 1983 (3) SCC 335, (*State of Rajasthan vs. Raja Ram*) 2003 (8) SCC page 180, (*Jai Singh and Others vs. State of Kamataka*) 2007 (10) SCC 788 . On facts Mr. Rao has urged that the observations of the trial Court that PW.1 was an interested witness and PW.5 a chance witness called for no interference more particularly as

A no corroborating evidence had come on record. He has further highlighted that the medical evidence was completely at variance with the ocular evidence and in that eventuality the accused were entitled to claim the benefit of doubt in their favour.

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The learned State counsel has, however, supported the judgment of the High Court and has pointed out that the High Court had dubbed the judgment of the trial Court as perverse and had for adequate reasons and a minute re-appraisal of the evidence reversed the findings thereof. It has also been C pointed out that the observation of the trial Court that there was substantial differences between the statements given to the police and the evidence given in Court vis-a-vis PW.1 and PW.5 was not correct as PW.1 who was the author of the FIR had specifically mentioned that PW.5 had been present at the D time of incident and even in his statement under Sec. 161 Cr.P.C. this fact had been noted.

We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr. Rao, E that interference in an appeal against an acquittal recorded by the trial Court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to re-appraise the evidence and conclusions drawn by the trial Court but only in a case when the judgment of the trial F Court is stated to be perverse. The word 'perverse' in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial Court which has been found perverse by the High Court was in fact so. We have gone through the evidence of PW.1 and PW.5 very carefully with the help of the G learned counsel. PW.1 stated that he had come to the place of incident as his uncle, the deceased, was a candidate in the election. His presence is therefore absolutely natural. PW.5 stated that she was vegetable vendor and had come to the site in order to sell her wares. Mr. Rao, has, however, sought to

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demolish her testimony by observing that she had started from her house at about 7.00 a.m. (as stated by her) and had reached the murder site after selling vegetables to several people and realising this difficulty she had changed the time to 6.00 a.m. to suit the circumstance that the murder too had committed at 7.00 a.m. We are of the opinion that inconsistency can be ignored as the witnesses belonged to a deprived section of society and her statement was being recorded after 8 years of the incident. It also cannot be ignored that PW.5 was hawking vegetables and it would, therefore, have been logical for her to have chosen the polling site for a visit as that would have ensured a crowd, and a crowd would have meant good business. Mr. Rao has also pointed out that PW.5 belonged to the Congress party which was the party of the deceased as well whereas the appellants belonged to the Telugu Desan Party and as such she could not be said to be an impartial witness. The matter has been extensively dealt with by the High court and we believe that had there been any motive to implicate any body on the basis of party affiliations, the main role in the entire incident would have been ascribed to A.6 who was the rival candidate. On the contrary A.6 has been given a very minor role in the entire incident and this was one of factors that had let to his acquittal by the trial Court and the confirmation of that order by the High Court as well.

Great emphasis has been laid by Mr. Rao in the apparent discordance between the medical and the ocular evidence. We reproduce herein the injuries found on the dead body:

> "1. Incised injury 2" x 1/2" on lower border of left color bone, extending downwards, backwards obliquely in the mid clavicular bone, through II inter costal space into the upper to be of left lung, margins clean cut spindle shaped,. cut section showed congestion of tissues injury in the lungs (L) is 1" x 1/2" size.
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> 2. Incised injury 2" x 1/2" on left infrascapular area at the level of 4" thoracic vertebra 3" away from midline extending

A obliquely down wards medically entered the plura cavity through 4th inter costal space.

3 3. Incised injury 2" x 1/2" on front of lower third of left upper arm. Muscle deep.

B 4. Lacerated injury 2" x 1" on the left temple, muscle deep.

5. Contusion 2" x 1" on right temple.

6. Incised injury 2" x 1/2" on left half of occipital area 2" away from left ear.

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7. Incised injury 2" x 1/2" on left half of occipital area 1" below and medial to injury No.6 margins clean cut, spindle shaped, scalp deep.

D 8. Incised injury 2" x 1/2" two in number on left shoulder pronounce. Muscle deep margins clean cut, on cut section congestion of tissues present."

A perusal of the injuries would reveal that injury No.1 has been caused by A.1, Injury No.2 either by A.2 or A.3, Injury No.3 E by A.1, Injury Nos.4 and 5 by A.1 with a stone and there are three or four additional injuries (on which emphasis has been laid by Mr. Rao) as they remain unexplained. Even assuming, however, that three injuries out of eight are unexplained, this one circumstance alone would not destroy the flow of the other F evidence. It is clear that the incident had happened in the course of the Mandal Parishad Elections with several people being involved and a large group of spectators being present at the spot. In this scenario we feel that it would have been well nigh impossible for any witness to have given a mathematical G or precise description of all the injuries that had been caused and that too in a melee. The fact remains that the injuries found on the dead body correspond fully with the weapons that had been used. As a matter of fact injury Nos.4 and 5 which appeared to be inflicted with a stone allegedly in the hands of

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A.1 clearly prove the veracity of the story as it would have been inconceivable for a witness to have imagined that a stone, (a very unusual weapon for a pre-planned attack) would be used as A.1 was also armed with a knife which he used after the injury had been caused with a stone. We are thus of the opinion that the medical evidence does not in any way contradict the ocular evidence.

We have also gone through the so called improvements/ inconsistencies in the statements given by PW.1 and PW.5 to the police vis-a-vis their statements in court. It must be emphasized that the incident happened in the year 1995 whereas the evidence was recorded after about 8 years. Some discrepancies are, therefore, bound to occur. The question to be noted is as to whether the discrepancies or improvements are such which go to the root of the matter and affect veracity of the prosecution's story. We are of the opinion that the evidence herein does not fall within this slippery category. It is clear from the FIR recorded by PW.1 and his statement in Court that PW.5 had been present at the time of the incident. The other discrepancies that have been pointed out are to no avail keeping in view the over all picture. We are, therefore, of the opinion that the High Court was fully justified in interfering in the matter and was well within its jurisdiction to do so, even in the light of the judgments cited by Mr. Rao. The appeals are, accordingly, dismissed.

R.P. Appeals dismissed.