

(2010) 07 SC CK 0040

In the Supreme Court Of India

Case No : Criminal Appeal No. 1852 of 2008

Siddanki Ram Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Evidence Act, 1872 — Section 11
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 2010 SC 3000 : (2010) AIRSCW 4768 : (2010) 2 ALD(Cri) 828 :
(2010) CriLJ 3910 : (2010) 8 JT 48 : (2010) 7 SCALE 332 : (2010) 7 SCC 69 :
(2010) 8 SCR 1119 : (2010) 5 Supreme 752 : (2010) 2 UC 1371

Hon'ble Judges : R. M. Lodha, J;A. K. Patnaik, J

Bench : Division Bench

Advocate : Sushil Kumar, Aditya Kumar and Guntur Prabhakar, for the
Appellant; Rama Krishna Reddy and Altaf Fahima for D. Bharathi Reddy, for the
Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is a Criminal Appeal against the judgment dated July 4, 2008 of the High Court of Andhra Pradesh in Criminal Appeal No. 147 of 2006.

2. The facts very briefly are that on February 28, 2005 one Komidi Sai Baba Reddy (deceased) was killed in the court premises of R.R. District at Cyberabad. The father of the deceased lodged a First Information Report (FIR) before the Station House Officer, P.S. L.B. Nagar alleging that on February 28, 2005 at 11.00 a.m. when the deceased was coming to the court, Narsimha Reddy's son, Srinivas Reddy and others sprinkled chilly powder in the eyes of the deceased and cut him by an axe and all this was done due to old vengeance. After investigation, a charge sheet was filed against 15 accused persons including the appellant in the court of the Second Metropolitan Magistrate, R.R. District, Cyberabad. As accused Nos. 11 to 15 were absconding, the case was split up and accused Nos. 1 to 10 were tried for several charges in Sessions Case No. 195 of 2005. After the trial the 5th Additional Sessions Judge (FTC) acquitted accused

Nos. 2 to 10 of the charges and convicted the appellant, who was the accused No. 1, u/s 302 of the Indian Penal Code, 1860 and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 25,000/- and in default to suffer Simple Imprisonment for one year.

3. Mr. Sushil Kumar, learned Counsel for the appellant, submitted that it will be clear from the evidence led by the prosecution that the deceased was killed in the court premises by a mob and there is no reliable evidence on record to show that it was the appellant who had killed the deceased. He took us through the evidence of PW-1, PW-5 and PW-6, who according to the prosecution are the eye witnesses, to show that none of them have been able to identify the assailant of the deceased. He referred to the FIR (Ext.P1) to show that the appellant-Ram Reddy had not been named in the FIR lodged by PW-1. He submitted that in the FIR the accused persons named are Narsimha Reddy's son and Srinivas Reddy, and the appellant is neither Narsimha Reddy's son nor Srinivas Reddy and, therefore, the evidence of PW-1 that the appellant was the assailant is not at all reliable.

4. He submitted that PWs 5 and 6 were police constables performing court duty and they did not know the appellant personally and yet they have deposed before the court that the appellant was the assailant of the deceased. He submitted that PW5 has stated that the appellant was wearing a Kurta and Lachi, whereas the Inspector of Police (PW-36), who arrested the appellant, has stated in his evidence that at the time of arrest, the appellant was neither wearing a Kurta nor a Lachi.

5. He next submitted that the Test Identification Parade was not at all fair because the appellant was arrested and eight others had also been arrested but only the appellant and one other accused were produced before the witnesses in the Test Identification Parade before the Judicial Magistrate (PW-34). He submitted that though the appellant was arrested on March 9, 2005, he was produced in the Test Identification Parade on April 23, 2005 about 54 days after the arrest and this inordinate delay in conducting the Test Identification Parade has not been explained by the prosecution.

6. He submitted that in any case in the Test Identification Parade PWs 1, 5 and 6 have not been able to properly identify the appellant. He submitted that PW-1, father of the deceased, has not identified the appellant at all. He argued that PWs 5 and 6 had enough opportunity to see the appellant prior to the Test Identification Parade and in fact when the appellant was produced before the court alongwith other accused persons after the arrest, PW-5 was one of the members of the police escort party and therefore he knew who was the accused before the Test Identification Parade. He submitted that PW-6 has stated before the Magistrate (PW-34) carrying out the Identification Parade that he can identify the appellant on the basis of a scar on the cheek, but PW-34 has stated in his evidence that the appellant did not actually have any such scar or wound mark.

7. Mr. Sushil Kumar vehemently argued that in the absence of any reliable evidence to establish beyond reasonable doubt that it was the appellant who was the assailant amongst the mob in the court premises, the conviction u/s 302 of the Indian Penal Code, 1860 cannot be sustained. According to him, this is a fit case in which the appeal should be allowed and the impugned judgment set aside and the appellant should be acquitted.

8. Mr. Rama Krishna Reddy, learned Counsel appearing for the State of Andhra Pradesh, on the other hand, supported the judgments of the trial court and the High Court. He submitted that the murder of the deceased took place at 11.00 a.m. in broad day light in the court premises during the court hours and in full view of the public and the evidence of PW-1 clearly establishes that the appellant killed the deceased out of revenge because the appellant's brother-in-law, Narsimha Reddy, had been killed on September 22, 2004. He submitted that the contention on behalf of the appellant that he is not named in the FIR by PW-1 is not correct. He submitted that in the FIR [Ex.P1] the brother-in-law of Narsimha Reddy was named as one of the accused and in the confessional statement of the appellant [Ex.P20] recorded by the Inspector of Police (PW-36) the appellant has admitted that he is the brother-in-law of Narsimha Reddy. He further submitted that pursuant to the confession, the axe with which the murder was committed (M.O.-1) was also recovered.

9. He next submitted that the trial court and the High Court have relied on the evidence of PWs 5 and 6, who were none other than the court constables and who had chased the appellant for a while after the incident. He argued that PWs 5 and 6 were therefore natural witnesses of the occurrence and they had no axe to grind against the appellant and their evidence ought to be believed.

10. Regarding the delay in conducting the Test Identification Parade, he submitted that there was no unusual delay in conducting the Test Identification Parade as the appellant alongwith eight others were arrested on 9/10 March, 2005 and were produced before the Magistrate on March 11, 2005 and thereafter on April 7, 2005 a requisition was made by the Inspector of Police (PW-36) for conducting the Test Identification Parade and on April 23, 2005 the Test Identification Parade was conducted by the Magistrate. He submitted that in any case the defence has not put any question to Investigation Officer (PW-36) seeking his explanation for the delay, if any.

11. Mr. Reddy cited State of Maharashtra Vs. Suresh, wherein this Court has observed that if potholes were to be ferreted out from the proceedings of the Magistrates holding Test Identification Parades then possibly no Test Identification Parade can escape from one or two lapses and Test Identification Parades would become unusable. He also relied on Daya Singh Vs. State of Haryana, in which this Court has held that a Test Identification Parade held 7 to 8 years after the incident was not vitiated where an enduring impression of the identity of the accused was gained during the incident.

12. He submitted that this Court has held in Mohd. Aslam Vs. State of Maharashtra, that where the testimony of an eye witness is supported by another eye witness with regard to the occurrence as well as the role of the accused in the occurrence, minor lapses, if any, in the conduct of the Test Identification Parade, cannot be a reason for acquitting the accused. He submitted that in the present case, PWs 1, 5 and 6, who were eye witnesses to the occurrence, have clearly spoken about the attack by the appellant on the deceased and their evidence is corroborated by the evidence of other witnesses including PWs 34 and 36. According to him, this is not a fit case in which this Court should interfere with the concurrent findings of the trial court and the High Court holding the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code, 1860.

13. The first witness on whom the High Court has relied on to convict the appellant is PW-1, the father of the deceased. The evidence of PW-1 is that on 28.02.2005 a case against his son and Sridevi was posted in the 2nd Metropolitan Magistrate Court and he had gone along with his son and Sridevi to the court premises and they attended the court as soon as the case was called and came out of the court at about 11.00 a.m. and at that time Narsing Yadav, accused No. 2, who was standing at the flag-post, sprayed chilly powder into their eyes and while his deceased son was trying to obliterate the chilly powder from his face, the accused No. 1 (the appellant) chased him with an axe and he ran after the appellant and when the deceased came to the corridor of the court, he bent his head to a side to save from the blow of the axe, due to which that blow was received by another person. Thereafter, the deceased took a turn to the left towards the 2nd Additional District Judge's Court and the chappal of the deceased slipped in that process and he bent and immediately the appellant hacked the deceased on left side of the neck. On seeing PW-1, the accused No. 1 raised the axe but PW-1 went a little bit back and then the appellant hacked the deceased three times on the left side of the neck and near the ear. PW-1 has further stated that this took place in the corridor of the Court Hall of 2nd Additional District Judge's Court. The appellant then started ringing the axe in the air showing threatening gestures so as to cause terror and create fear in the mind of the people and although an advocate tried to catch the appellant he could not catch him and the appellant jumped the compound wall of the court opposite to the main entrance and went away.

14. The evidence of PW-1 naming the appellant Ram Reddy as the assailant of the deceased is not reliable because though PW-1 has stated that he knew that accused No. 1 (the appellant) was the brother-in-law of Narsimha Reddy and that his name was Ram Reddy, in the FIR (Ex.P-1) which was lodged in less than an hour after the incident at about 11.45 a.m. he has not mentioned the name of the appellant as Ram Reddy. The evidence of the Investigation Officer (PW-36) also is that PW-1 did not state the name of the appellant as Ram Reddy before him at the time of the inquest. If PW-1 knew the appellant as Ram Reddy at the time of the occurrence, he would have named Ram Reddy in the FIR (Ex.P1)

which he lodged within an hour of the incident and would have also named him as the assailant before the Investigation Officer (PW-36) The omission on the part of PW-1 not to mention the name of appellant as Ram Reddy in the FIR (Ex.P1) before the Investigation Officer soon after the incident or at the time of inquest is relevant for deciding whether the evidence of PW-1 that the appellant was the assailant is reliable. In Ram Kumar Pandey Vs. State of Madhya Pradesh, cited by Mr. Sushil Kumar, this Court has held that omissions of important facts in the FIR affecting the probabilities of the case are relevant u/s 11 of the Evidence Act in judging the veracity of the prosecution case. In that case, the omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR was held to be very significant in the circumstances of the case.

15. Moreover, it appears that PW-1 did not actually know the appellant at the time of the incident and therefore did not name the appellant in the FIR (Ex.P-1). The Investigation Officer (PW-36) has stated in his evidence that PW-1 did not know the accused previously and therefore he requested the inclusion of PW-1 in the Test Identification Parade. In the Test Identification Parade, PW-1 could not identify any person as the assailant of the deceased. The evidence of the Magistrate (PW-34), who conducted the Test Identification Parade, is that PW-1 did not state before him that he can identify the appellant-Ram Reddy. The proceedings of the Test Identification Parade (Ex.P64) show that PW-1 has not identified any of the suspects. The version given by PW-1 in the witness box that the appellant was the assailant of the deceased appears to be based on his suspicion that the appellant out of grudge may have killed the deceased. This suspicion of PW-1 is borne out by his own testimony to the effect that Ram Reddy (accused No. 1) is the brother-in-law of the deceased Narsimha Reddy and bearing grudge in regard to his brother-in-law being killed accused No. 1 has done this.

16. The next eye-witness on which the High Court has placed reliance is PW-5. His evidence is that he was working as a police constable in L.B. Nagar P.S. since 11.06.2001. On 28.02.2005, he was on court duty working as court constable in the court of the 2nd Metropolitan Magistrate and he came to the court at about 10.00 a.m. or 10.30 a.m. At about 11.00 a.m. he was at the front of the entrance of the court and he saw people running into the court building towards the 2nd A.D.J., court. He saw a person with white kurta and pajama running to the court building chasing another person in white clothes and the person with white kurta and pajama hacking the person in front of him with an axe on his neck near the 2nd A.D.J. Court Hall and after hacking the assailant was running out through the main entrance towards the compound wall and then he and Mahender (PW-4), who was an advocate, chased the assailant but the assailant ran and went to the motorcycle on the other side of the compound wall. Mahender (PW-4) threw a stone on the assailant which hit him on the back and then he returned to the 2nd A.D.J. Court Hall where he saw the victim lying on the ground with faint breathing. While giving his evidence PW-5 pointed out towards the appellant who was standing in the Court Hall and identified him as

the assailant.

17. PW-5, who was a constable attending to his duties in the court, was not expected to know the appellant before the incident, but he claims to have seen the appellant on 28.02.2005 when he attacked the deceased by an axe. He was summoned to Cherlapally Jail for the Test Identification Parade and he has identified the appellant as the assailant during the Test Identification Parade. If PW-5 saw the appellant for the first time in the Test Identification Parade on 23.04.2005 his evidence would have been trustworthy. His evidence, however, is that he was present when the accused No. 1 (the appellant) and other accused persons were produced for remand in the court on 11.03.2005 and he therefore knew the physical features of appellant on 11.03.2005. It is thus clear that when the Test Identification Parade took place on 23.04.2005, PW-5 had not only seen the appellant but also had knowledge that the appellant was the accused in the murder which took place in the court premises on 28.02.2005.

18. In *Lal Singh and Others Vs. State of Uttar Pradesh*, cited by Mr. Sushil Kumar, this Court has held that the Court has to rule out the possibility of the witnesses having been shown to the witnesses before holding a Test Identification Parade. In fact, in *State of Maharashtra v. Suresh* cited by Mr. Reddy, this Court has noted that all precautions were taken that the witnesses could not see the suspect during transit from the lock-up to the place for Test of Identification Parade. But as we have seen, PW-5 had already seen the appellant in court on 11.03.2005 and already knew that the appellant was the accused when the Test Identification Parade was conducted on 23.04.2005. The evidence of PW-5 that the appellant was the assailant is, therefore, not reliable.

19. The last eye witness on whom the High Court has relied upon is PW-6. His evidence is that on 28.02.2005 he came to court by 10.30 a.m. and attended the J.F.C.M., East and North, and at about 11.00 a.m. he went to the section of 2nd A.D.J. court on some work and was returning when he saw a person armed with an axe coming from the main entrance side towards the 2nd A.D.J. Court Hall and he hacked the person whom he was chasing with the axe on his neck. The victim collapsed to the ground and he and a civilian by the name Kumar tried to catch hold of the assailant, but the assailant by ringing the axe around terrorised everyone and created fear in the mind of the people. The further evidence of PW-6 is that when the assailant gave a blow he bent to the side and then the assailant went through the main entrance. He was summoned to Cherlapally Jail for the Test Identification Parade in which he identified the accused No. 1 (the appellant) as the assailant. It is difficult to believe the evidence of PW-6 regarding the identification of the appellant as the assailant because in the Test Identification Parade he has stated that the suspect has injury mark on his right cheek and the Magistrate (PW-34) conducting the Test Identification Parade has stated in his evidence that according to his Report (Ex. P64) none of the two suspects had injury mark on the right cheek.

20. This Court has held in *Daya Singh v. State of Haryana* (supra) cited by Mr.

Reddy that the purpose of test identification is to have corroboration to the evidence of the eye witnesses in the form of earlier identification and that the substantive evidence of a witness is the evidence in the Court and if that evidence is found to be reliable then absence of corroboration by test identification would not be in any way material. In the facts of the present case, a mob attacked the deceased in the crowded corridors of the court of the 2nd Additional District Judge and PW-1, PW-5 and PW-6 in their evidence in the court claim to have seen the accused No. 1 (appellant) chasing the deceased with an axe and assaulting the deceased with axe on his neck. All these three eye witnesses have also stated that soon after the assault the appellant ran away from the court premises. The three eye witnesses thus saw the assailant for a very short time when he assaulted the deceased with the axe and thereafter when he made his escape from the court premises. When an attack is made on the injured/deceased by a mob in a crowded place and the eye witnesses had little time to see the accused, the substantive evidence should be sufficiently corroborated by a test identification parade held soon after the occurrence and any delay in holding the test identification parade may be held to be fatal to the prosecution case. In *Lal Singh and Ors. v. State of U.P.*, this Court has held that where the witness had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously.

21. Further, the test identification parade in this case has not been fair to the appellant. Although eight suspects were arrested, only the appellant and one other were produced before the witnesses at the Test Identification Parade. This gives room for a lot of doubt on the case of the prosecution that none other than the appellant was the assailant. In *State of Maharashtra v. Suresh (supra)*, on which reliance was placed by Mr. Reddy, the Court found that the suspect was permitted to stand anywhere among seven persons and the witnesses were then asked to identify the person whom they saw on the crucial day and on these facts this Court held that the test identification parade was conducted in a reasonably foolproof manner. This is not what has been done in the present case and, therefore, the corroboration of the substantive evidence of PWs 1, 5 and 6 on the identification of the suspect by the test identification parade is not trustworthy.

22. It is true, as has been submitted by Mr. Reddy, that both the trial court and the High Court have arrived at concurrent findings on the basis of the evidence of PWs 1, 5, 6 and other witnesses that the appellant was the assailant of the deceased and that concurrent findings of fact arrived at on the basis of evidence by the trial court and the High Court are not normally interfered with by this Court in appeal. But as has been held by this Court in *A. Subair Vs. State of Kerala*, when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence and the judgments of the courts below will have to be interfered with. This Court has also held in *Mankamma Vs. State of Kerala*, that ordinarily this Court does not

interfere in a matter by re-appreciating the evidence but when it is found that the evidence has been appreciated by the High Court in a mechanical manner and without proper consideration of facts and circumstances on record, this Court will have to re-appreciate the evidence in the interest of justice. This is one such case in which both the trial court and the High Court have mechanically relied on the evidence of PWs 1, 5 and 6 that it was the appellant who had attacked the deceased with an axe in the court premises without appreciating that it was unsafe to rest conviction upon the evidence of PWs 1, 5 and 6 with regard to the identification of the assailant.

23. In the result, we allow this appeal and set-aside the impugned judgments of the High Court and the trial court and direct that the appellant, who is in custody, be released forthwith if not required in any other case.