

**(2010) 08 SC CK 0028**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 1361 of 2003**

The State of Andhra Pradesh

APPELLANT

Vs

M. Narasimha Rao

RESPONDENT

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**Date of Decision : 27-08-2010**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 449

**Citation :** AIR 2010 SC 3776 : (2010) AIRSCW 6450 : (2011) 1 ALD(Cri) 388 : (2011) 1 JCR 272 : (2010) 9 JT 235 : (2011) 1 RCR(Criminal) 536 : (2010) 9 SCC 166 : (2010) 10 SCR 533 : (2010) 3 UC 1385

**Hon'ble Judges :** H. S. Bedi, J; Chandramauli Kumar Prasad, J

**Bench :** Division Bench

**Advocate :** I. Venkata Narayana, Anuradha Rustogi and D. Bharathi Reddy, for the Appellant; M. Qamaruddin and Ambar Qamaruddin, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Harjit Singh Bedi, J.—This appeal against acquittal at the instance of the State of Andhra Pradesh arises out of the following facts.

2. M. Narasimha Rao, the respondent herein, and the deceased T. Subbaiah were residents of village Veknuru. The deceased was married with PW2 and they had two sons PWs.1 and 3. Some two months prior to the present incident, a quarrel had taken place between the respondent and PW1 in which PW1 had suffered a beating. In order to avenge this insult, PW3 went to the house of the respondent and gave him a sound thrashing. On 13th September 1995, PW3 planned to go on a religious journey to Pedakakani and while doing so, he requested his mother 2PW2 and his father to sleep in his house while he was away. Accordingly, the deceased and PW2 went to the house of PW3 to sleep there that night. At about mid night on the night intervening between 13th and 14th September 1995, the accused respondent reached the house of PW3 armed with a knife and on seeing a person sleeping on the cot in the verandah, and believing him to be PW3, attacked him administering several knife blows. On hearing the commotion, PW2

who was sleeping on a mat besides her husband's cot, cried out in alarm and also attempted to intervene to save her husband, but the accused pushed her down. In the meanwhile, PW1 whose house was close by also rushed to spot and he also witnessed the incident and attempted to catch the accused who, however, managed to run away. The accused thereafter went to the house of his maternal uncle PW6 who told him to get out of the house. At 8 a.m. on 14th September 1995 PW1 went to the Village Administrative Officer PW8 and narrated the incident to him. PW8 recorded the circumstances in writing and sent the information to Police Station Avanigadda and a formal FIR was registered in the Police Station. The accused was thereafter arrested and on the completion of the investigation, a charge sheet was filed under Sections 449 and 302 of the IPC. He pleaded false implication and claimed trial. In support of its case, prosecution examined 13 witnesses in all, the primary witnesses, being one PW1, the elder son of the deceased, who had come to the place of incident during the occurrence after hearing cries of his mother and had also attempted to apprehend him, PW2, the wife of the deceased and mother of PW1 and PW3, the younger brother of PW1, who had gone on a pilgrimage and was in fact the cause of the attack and PW8 the Village Administrative Officer, who had recorded the first information report. Certain other witnesses, who are not eye witnesses, were, however, declared hostile. The prosecution also relied upon various documents such as the post-mortem report and circumstantial evidence such as the recovery of the murder weapon at the instance of the accused etc. The trial court relying on the evidence of PW1 and PW2, both eye witnesses, and the closest relatives of the deceased, as corroborated by the statement of PW3 with regard to the motive convicted the accused. It held that though some of the witness had not supported the prosecution story, it was of no consequence as they had no role to play in determining the truthfulness of the eye witness account of PW1 and PW2. The court accordingly held that though PWs 6 and 9 with respect to the extra judicial confession and the recovery of weapon of murder had not supported the prosecution, this factor would have no effect on the prosecution story. The court also observed that in the light of the fact that the incident had happened at night and PW2 was an old woman 75 years of age and must have been completely traumatized by the events, the mere fact that the FIR had been lodged at about 10 a.m. or the special report had been delivered four hours later, could not detract from the prosecution story. The trial court, accordingly, convicted and sentenced the accused to undergo imprisonment for life u/s 302 of the IPC but did not record any conviction u/s 449 of the IPC. An appeal was thereafter taken to the High Court of the State of Andhra Pradesh. The Division Bench by its judgment dated 18th April 2002 reversed the findings of the trial court and acquitted the accused. In doing so, the High Court observed that as some of the witnesses, PWs.4, 5, and 6, who had reached the place of incident soon after the incident, had turned hostile and PW9, the witness of the extra judicial confession had also not supported the prosecution, the reliance on the statements of PWs.1 and 2 alone was a matter which needed examination with care. It observed that PW2 was the wife of the

deceased and was an eye witness but as PW1 had come to the spot after the occurrence and had not been present at the time of the incident, it appeared that he was not an eye-witness, and the court had to be extremely careful before recording a verdict of guilt on the basis of the statement of a solitary witness. The court then held that the incident had been happened at about mid night of the 13th and 14th September and the FIR had been lodged after 8 hours though the Police Station was 7 km. away from the place of incident and in the fact that the special report had been delivered 4 hours later to the Magistrate's Court, which was in the same compound as the Police Station was also belated exercise. The present appeal has been filed by the State of Andhra Pradesh challenging the order of the High Court and after the grant of leave, the matter is before us.

3. The learned Counsel for the appellant has, first and foremost, pointed out that there was no reason whatsoever to disbelieve PW1 and PW2 as they were eye witnesses to the incident and also the closest relatives of the deceased. It has been further pointed out that only witnesses, who could be expected at the night in a residential house, would be the immediate members of the family and to look for evidence beyond these witnesses was difficult to accept. It has also been pleaded that there was no delay in the lodging the FIR as the statement had been made by PW2 to the Village Administrative Officer at about 8 a.m. and it was his duty to forward the information to the Police Station and if in doing so, some time had been taken as the Police Station was 7 km. away from the village, there was absolutely no delay in registration of the FIR. It has been further submitted that the delay in the delivery of the special report would become insignificant in the light of the categorical eye witness evidence.

4. The learned Counsel for the accused respondent has, however, pointed out that the High Court having recorded an acquittal, the reappraisal of the evidence by this Court, was not justified. On merits, it has been pleaded that PW1 was not an eye witness and there was absolutely no justification for the trial court to have held otherwise. It has further been pleaded that the evidence of PW2 was at variance with the medical evidence and the fact that she had not seen the incident was borne by the fact that the FIR had been belatedly recorded and the special report delivered belatedly as well.

5. We have heard the learned Counsel for the parties and gone through the record. It is true that interference by this Court on a reappraisal of the evidence should not ordinarily be made particularly in the case of an acquittal appeal but if it is found that the judgment of acquittal recorded by the High Court was not justified on the evidence, it would be a travesty of justice for this Court to ignore this aspect and the circumstances may, thus, warrant that the exercise be performed. We see that the case hinges on the testimony of PW1 and PW2. PW2 was the wife of the deceased and the mother of PW1. The prosecution story is that PW3 had gone to a pilgrimage with his family and requested his parents to sleep in his house at night so as to guard the house and the accused thinking

that the person sleeping in the verandah outside the house was PW3 attacked the deceased with a knife and killed him instantaneously. The fact that there had been ill will between the families of the deceased, particularly PW1 and PW3 on the one side, and the accused on the other is clear from the evidence of PWs1, 2 and 3. It is also significant that the accused while running away had called out that he had killed PW3 and would now kill PW1. It is obvious that the intended victim of the attack was PW3 and he managed to escape as he was not at home and his aged father paid the penalty on the mistaken impression of the accused. In this background, the evidence of PW1 and PW3, is completely trustworthy. PW2 stated that she had been sleeping beside her husband's cot in the verandah when she had heard a noise and had looked up and seen the accused attacking her husband and while she was looking on he had caused some additional injuries as well. It is also her case that her cries had attracted PW1, whose house was at a distance of 25 to 30 yards from the house of deceased and who had reached the place during the attack and had also attempted to catch hold the accused but he had pushed him aside and then run away. For the High Court therefore to hold PW1 was not an eye witness is erroneous. We also see that eye witness account is fully corroborated by the medical evidence. The Doctor, PW11 who conducted the post-mortem had found several cut injuries on the face and neck of the deceased. They are reproduced herein below:

A cut injury of 0.5 cms below the nose extending both sides 1 cms below the lobule of both ears size 30 cms x 5 cms, bone deep, severing muscles, vessels, nerves and fracturing maxilla and mandible and roots of teeth. 2. A cut injury of 1 cms below upper lip extending upto angle of mandible on left side and upto the angle of mouth on right side, size 15 cms x 5 cms x bone deep severing muscles, vessels, nerves and fracturing mandible and roots of teeth. 3. A cut injury of over chin extending both sides, left side upto sterna mastoid muscle, right side upto the angle of mandible, size 25 cms x 5 cms x bone deep severing muscles, vessels, nerves, fracturing mandible on right side. Brain and meninges; left carotid vessels are cut severed stomach contains-partially digested rice.

6. The violence and intensity of the attack shows that it must have taken place over a couple of minutes and it would not only have enabled PW1 to reach the place of incident but also PW2 to have properly identified the accused as he was also a resident of the same village. It is in the statement of PW1 that his house was adjoining the house of PW3 and it was, accordingly, possible for him to rush to the scene so as to give him the status of an eye witness. As a matter of fact, in the cross examination, there is no serious suggestion that he had reached the place after the incident and after the accused had run away and the broad suggestion is that the deceased had been killed by some unknown person as he had many enemies in the village and the surrounding area.

7. To our mind, therefore, as the eye witnesses have fully supported the prosecution story, and the fact that the witness of the extra judicial confession PW9 or the recovery of the weapon etc. did not support the prosecution, would

not detract from their evidence.

8. We are also of the opinion that there is no delay in the recording of the FIR. It cannot be ignored that PW2 had witnessed the murder of her husband and that too in a most brutal and bloodcurdling manner as the evidence is that the injuries had led to a huge amount of bleeding. PW-2 was a lady of 75 years of age but she had nevertheless given the statement to the Village Administrative Officer at about 8 a.m. and the information had been forwarded to the police station. If any delay occurred after 8 a.m. it was a matter which was beyond the control of PW2. In any case, in the light of the fact that information had been conveyed to the police station at 10 a.m. of what had happened at 1 or 2 a.m. in a remote village 7 km. away from the police station, we are of the opinion that there was no delay in the lodging of the FIR and if there was some delay, it stood explained. In the face of unimpeachable evidence the late delivery of the special report by itself would do no great damage to the prosecution story. We, accordingly, allow this appeal, set aside the judgment of the High Court and convict the accused respondent u/s 302 of the IPC and sentence him to undergo RI for life and a fine of Rs. 100/- and in default of fine, to undergo SI for 15 days. The accused respondent be taken into custody forthwith to serve out his sentence.