K. Gopal Reddy vs State Of Andhra Pradesh on 22 November, 1978

Equivalent citations: 1979 AIR 387, 1979 SCR (2) 265, AIR 1979 SUPREME COURT 387, 1979 ALL. L. J. 137, 1979 UJ (SC) 52, (1979) 1 SCJ 2, (1979) 2 SCWR 159, 1979 CRI APP R (SC) 142, 1979 SCC(CRI) 305, (1979) 2 SCR 363, (1979) SC CR R 59, 1980 CHANDLR(CIV&CRI) 95, (1979) MAD LJ(CRI) 259, 1979 (1) SCC 355

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, Jaswant Singh

PETITIONER:
K. GOPAL REDDY

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT22/11/1978

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SINGH, JASWANT

CITATION:
1979 AIR 387 1979 SCR (2) 265
1979 SCC (1) 355
CITATOR INFO :
RF 1992 SC2155 (2,3)

ACT:
Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970-Appellant acquitted by trial court on the ground that two views were possible on the evidence-High Court convicted and sentenced him-Appellate Court-When can review evidence-
Words and phrases- "Proof beyond reasonable doubt" meaning of.

HEADNOTE:

The appellant was charged with the offence of committing the murder of his wife. The trial court acquitted him on the ground that the prosecution had failed to establish any motive for the offence, that the evidence of the prosecution witnesses was discrepant, conflicting and improbable and that when two views were possible on the basis of two divergent versions given by the prosecution and the defence, the benefit of doubt should be given to the accused.

The High Court reversed the order of acquittal and convicted and sentenced the appellant to imprisonment for life on the view that the trial court had magnified the importance to be attached to the discrepancies which were of a minor nature

In appeal to this Court it was contended on behalf of the appellant that in all cases where two views of the evidence were possible the accused was entitled to the benefit of doubt arising from the two views and that on this principle the High Court should not have interfered with the order of acquittal merely because another view was also possible.

Dismissing the appeal:

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HELD : (1) Where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule. [370D]

(2) After the decision of this Court in Sanwat Singh v. State of Rajasthan (AIR 1961 SC 715) this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup v. Emperor (61 T.A. 389). Occasionally phrases like "manifestly illegal", "grossly unjust have been used to describe the orders of acquittal which warrant interference. But such expressions have been used more as flourishes of language to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In two other cases it has been held that to the principles laid down in Sanwat Singh's case may added the further principle that if two

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reasonable conclusions could be reached on the basis of the evidence on record the appellate court should not disturb the finding of the trial court. This principle stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible one must necessarily concede

the existence of a reasonable doubt. But fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore essential that, any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. A reasonable doubt does not mean some light, airy, insubstantial doubt that may flit through the mind of a Judge about almost anything at any time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict, it means a real doubt, a doubt founded upon reason. "Proof beyond a reasonable doubt" does not mean proof beyond a shadow of doubt The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man be to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible but not in the least probable," the case is proved beyond reasonable doubt but nothing short of that will suffice. [369A-G]

Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 applied.

Ramabhupala Reddy & Ors. v. The State of A.P., AIR 1971 SC 460, Bhim Singh Rup Singh v. State of Maharashtra, AIR 1974 SC 286, Miller v. Minister of Pensions, [1947] 2 All. E.R. 372; Khem Karam & Ors. v. State of U.P. & Anr., 1974 SC 1567 referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 133 of 1975.

Appeal from the Judgment and order dated 3-2-1978 of the Andhra Pradesh High Court in Crl. A. No. 628/73.

R. Nagarathnam for the Appellant.

P. Parmeswara Rao and G. N. Rao for the Respondent. The Judgment of the Court was delivered by CHINNAPPA REDDY, J.- This appeal has been filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970. The appellant was acquitted by the learned Additional Sessions judge, Chittoor of an offence under Section 302, Indian Penal Code. The acquittal was reversed by the High Court of Andhra Pradesh and the appellant was convicted under Section 302 Indian Penal Code and sentenced to suffer imprisonment for life.

The deceased Subhadramma was the wife of the appellant. They were married about one and a half years before the occurrence. About three months before the occurrence the deceased gave birth to a female child in the house of the accused at Cherlopalle. After the ninth day the mother and child, according to customary practice, were taken by the mother of the deceased to her house at Krishna Kalva. Cherlopalle is about 25 miles from Krishna Kalva. The accused used to visit his wife and often used to stay in the house of the deceased's mother. After about one and a half months the, accused asked his mother-in-law and brother-in- law to send his wife to his place. They replied that she had only delivered a child recently and that she would be sent to her husband's house in the fifth month. On 18th December, 1972, according to the case of the prosecution the accused once again requested his mother-in-law to send his wife to his house. This time he also brought with him P.W. 8, an elderly gentleman from his village. His mother-in-law P.W. 2 told him that she would send the girl in the fifth month as she had not yet regained her health after delivery. The accused and P. W. 8 went away. That evening the accused again came to the house of his mother-in-law. After dinner all of them went to sleep. The house consisted of only one room. The accused, the deceased, her brother P.W. 1, her mother P.W. 2 and her grand-mother P.W. 3 were all sleeping in the room. In the middle of the night P.Ws. 1, 2 and 3 were awakened by the cry "Amma" raised by Subhadramma. On waking up they saw the accused sitting by the side of the deceased with a knife in his hand. They found the deceased bleeding profusely from the left side of her chest. P.W. 1 put his foot on the hand in which the accused was holding the knife. The accused dropped the knife which was then picked up by the grand-mother P.W. 3. Attracted by the cries raised by the P.Ws. 1 to 3, the neighbourers P. Ws. 4, 5, 6 and others came there. They caught hold of the accused and tied him to a pole in front of the house by means of a rope. Some of the villagers who had gathered there also gave a beating to the accused P.W. proceeded to the house of P.W. 9 the Village Munsif and reported the occurrence to him. P. W. 1 affixed his thumb impression on the report Ex. P. 1 prepared by P. W. 9. P. W. 9 then proceeded to the house of P.W. 1 where the blood stained knife M.O. 1 was handed over to him. Thereafter, P. W. 9 prepared his own report Ex. P. 4 and sent it alongwith Ex. P. 1 and M.O. 1 to the Police Station at Renigunta. P. W. 14, the Sub Inspector of Police registered the First Information Report at 5 A. M. on 19th December, 1972 and went ahead with the further investigation which was later taken over by the Inspector of Police P.W. 15. When the Police officers went to the village, they found the accused tied to a pole. They arrested him and found that he had injuries on his person. They got him examined by a Doctor. After holding the inquest the dead body was sent for postmortem examination. The Medical Officer, P. W. 12 who conducted the autopsy, found on the dead body a stab wound over the left axila 6 cms. below the arm pit 1.75 cms x 0.5 cm. nearly horizontal. The stab injury had gone through the third intercostal space and through the upper lobe of the left lung in an upward and medial direction. The upper lobe of the left lung had been cut through and through,, and had collapsed. P. W. 13 the Medical officer who examined the accused found several abrasions and contusions on the person of the accused. There was no fracture. After completing the investigation the Police laid a chargesheet against the accused and he was duly tried.

The plea of the accused was one of denial. In the Committing Court the accused was content with a bare denial but in the Court of Sessions he stated that he went to the house of his mother-in-law at about 10 p.m. On 18th December, 1972. P. Ws. 1 and 2 taunted him saying "we are maintaining you and your wife, yet you come at any time you like`'. They insulted him. There was an altercation. P.W. 3 hit him with a stone near his left eye. P. W. 1 beat him with a stick two or three times. He felt

giddy and was about to lose consciousness. P. W. 1 came upon him with a knife to stab him. The deceased intervened and interposed herself between P.W. 1 and the accused. She received a stab injury. Seeing his wife injured, he fell down unconscious. He regained consciousness next morning.

The Learned Sessions Judge held that the prosecution had failed to establish any motive and that the evidence of the prosecution witnesses was 'discrepant, conflicting and improbable.' He thought that the prosecution had made an attempt to improve its case which was originally based on circumstantial evidence to made it appear as if P.W. 3 had also seen the stabbing. He commented on the failure of the Police to seize the mat or bedding on which the deceased was sleeping. He referred to the evidence of me Doctor who stated that the injury found on the deceased could have been caused even if she was standing. The learned Sessions Judge thought that when there were two divergent versions given by the prosecution and the defence and when two views were possible, the benefit of doubt should be given to the accused. He, therefore, acquitted the accused.

The High Court reversed the finding of acquittal. The learned Judges pointed out that there was no reason to doubt the testimony of P. Ws. 1 to 3 and that the discrepancies noticed by the learned Sessions Judge were of a minor character. The High Court observed that the learned Sessions Judge had magnified the importance to be attached to minor discrepancies. The High Court also concluded from the medical evidence that it was more probable that the deceased was stabbed when she was lying down. Accepting the evidence of P. Ws. 1 to 3 which was corroborated by the evidence of P. Ws. 4 and 5 who came to the scene soon afterwards, the High Court convicted the accused under Section 302 and sentenced him as aforesaid.

In this appeal the learned Counsel for the appellant argued that the accused had no motive to kill his wife and that his version was more probable than the version of the prosecution. He submitted that the version of the accused that the occurrence took place at about 10 p.m. was substantiated by what was mentioned in Ex. P. 15 the wound certificate given by P.W. 13 the Medical officer in respect of the injuries which he found on the person of the accused. He urged that the knife was not seized by the Police under any seizure Memo nor was the knife sent to any finger print expert. He urged that at the reasons given by the learned Sessions Judge had not been met by the High Court. He also contended that two views were possible on the evidence and the accused was entitled to the benefit of doubt.

We have perused the relevant evidence as well as the judgments of the Sessions Judge and the High Court. We are unable to find any substance in the submissions made by the, learned Counsel for the appellant. The High Court was well justified in commenting that the discrepancies on the basis of which the Trial Court rejected the evidence of P. Ws. 1, 2 and 3 were of a minor character and that they have been unduly magnified by the learned Sessions Judge. The discrepancies were in regard to which of them woke up first, where was the lantern and which of the neighbours came first to the scene on hearing their cries. The High Court was also right in holding that the medical evidence supported the prosecution version and not the defence version. Merely because the Medical Officer stated that the victim could have received the injury if she was standing, it did not follow that the injury could have been received in the circumstances mentioned by the accused. The injury was inflicted with great force and its direction was upward. The location of the injury was 6 cms. below

the arm pit on the left side. According to the accused the deceased received the injury when she placed herself between P. W. 1 and himself. We do not think that an injury of the nature received by the deceased could have been caused in the manner suggested by the accused. The injury must have been caused in the manner suggested by the prosecution that is, when the deceased was lying on her right side. It is true that the accused did not have any deep motive to kill the deceased. It is obvious that he must have been upset by the persistent refusal of the brother and mother of the deceased to send her with him to his house. He probably attributed the refusal to reluctance on the part of his wife to accompany him straightaway. We may also refer here to the comment of the learned Counsel for the appellant that realizing that the motive would assume considerable importance if the case was one based on circumstantial evidence, the prosecution tried to make P. W. 3 depose as if she had witnessed occurrence. We do not think that the comment is justified. P.W. 3, an old woman of 69 years, stated in her evidence that she saw the accused who was sitting by the side of the deceased on the cot make a gesture as if he was stabbing the deceased and that the deceased cried out 'Amma.' In cross-examination she stated that she did not remember if she had told the Police that the accused made a gesture as if he was stabbing the deceased. The Inspector of Police P. W. 15, however, stated that P. W. 3 did not state before him that she saw the accused making a gesture as if he was stabbing the deceased. We do not think that we will be justified in rejecting the evidence of all the prosecution witnesses on the basis of this statement of P. W. 3. At the worst the so called improvement made by her may be rejected but no more. We are unable to discover any good reason to reject the evidence of P. Ws. 1 to 3 or the evidence of P. Ws. 4 and 5. We are afraid the learned Sessions Judge allowed himself to be assailed by airy and fanciful doubts. We are satisfied that the High Court was justified in interfering with the order of acquittal.

The learned Counsel for the appellant advanced the usual argument submitted in all cases where an order of acquittal is reversed, namely, that where two views of the evidence are possible, the accused is entitled to the benefit of the doubt arising from the two views and that where the Trial Court has taken a possible view and acquitted the accused, the High Court should not interfere with the order of acquittal merely because another view is also possible.

The principles are now well settled. At one time it was thou ht that an order of acquittal could be set aside for "substantial and compelling reasons" only and Courts used to launch on a search to discover those "substantial and compelling reasons". However, the 'formulae' of "substantial and compelling reasons", "good and sufficiently cogent reasons" and "strong reasons" and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh & Ors. v. State of Rajasthan(1). In Sanwat Singh's case, this Court harked (1) A.l.R. 1961 S.C. 715.

back to the principles enunciated by the Privy Council in Sheo Swarup v. Emperor(1) and re-affirmed those principles. After Sanwat Singh v. State of Rajasthan, this Court has consistently recognised the right of the Appellate Court to review the entire evidence and to come to its own conclusion, bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup's case. Occasionally phrases like 'manifestly illegal', grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more, as flourishes of language, to emphasise the reluctance of the Appellate Court to interfere with an order of acquittal than to curtail the power of the Appellate Court to review the entire evidence and to

come to its own conclusion. In some cases Ramabhupala Reddy & Ors. v The State of A.P.(2), Bhim Singh Rup Singh v. State of Maharashtra(3) it has been said that to the principles laid down in Sanwat Singh's case may be added the further principle that "if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the finding of the Trial Court". This, of course, is not a new principle. It stems out of the fundamental principle, of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reason"(4). As observed by Lord Denning in Miller v. Minister of pensions(5) "Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt.

(1) 61 I.A. 389.

(2) A.I.R. 1971 S.C. 460.

(3) A.l.R. 1974 S.C. 286.

(4) Salmon J. in his charge to the jury in R. V. Fantle reported in 1959 Criminal Law Review 584.

(5) [1947] 2 All. E.R. 372.

The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice". In Khem Karan & Ors. v. State of U.P. & Anr.(1)., this Court observed:

"Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony".

Where the Trial Court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule. That is what the High Court has done in this case. The appeal is dismissed.

P. B. R. Appeal dismissed.

(1) A.I. R. 1974 S.C. 1567.