Bollavaram Pedda Narsi Reddy And Ors vs State Of Andhra Pradesh on 7 May, 1991

Equivalent citations: 1991 AIR 1468, 1991 SCR (2) 723, AIR 1991 SUPREME COURT 1468, 1991 (3) SCC 434, 1991 AIR SCW 1324, 1991 UP CRIR 329, 1991 SCC(CRI) 586, 1991 CRILR(SC MAH GUJ) 494, (1991) 2 SCR 723 (SC), 1991 CRIAPPR(SC) 256, 1991 APLJ(CRI) 398, 1991 (2) SCR 723, 1991 (2) UJ (SC) 473, (1992) MAD LJ(CRI) 146, (1991) 2 RECCRIR 373, (1991) 2 CRILC 693, (1991) 2 APLJ 58

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, Kuldip Singh

PETITIONER:
BOLLAVARAM PEDDA NARSI REDDY AND ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT07/05/1991

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
KULDIP SINGH (J)

CITATION:
1991 AIR 1468 1991 SCR (2) 723
1991 SCC (3) 434 1991 SCALE (1)909

ACT:
Supreme Court (Enlargement of Criminal Apellate Jurisdiction) Act, 1970: Section 2.
Indian Penal Code 1860: Section 302 and 149.
Criminal Law-Murder-Identification of accused-Circumstances showing that eye-witnesses did not have the opportunity to identify the accused-Rejection of testimony of witnesses and acquittal by trial court-Appeal against acquittal by the State-Power of appellate court to reapraise and evaluate evidence-Reversal of acquittal order and conviction of accused by appellate court held not justified.
Indian Evidence Act, 1872: Section 9.
Test Identification Parades-Mixing of persons know to

accused with witnesses-Effect of.

HEADNOTE:

The appellants (A-1 to A-3 and A-5-6), along with Co-accused (A-4), were prosecuted under sections 302/149 of the Indian Penal Code. Test identification parades were conducted by the Magistrates in which A-6 was identified by PWs 1, 2, 3 and 4 and A -1, 2,3,and 5 were identified by PWs 1 and 2. The trial court held that the identification parade was perfunctory and was of no assistance to the prosecution. It also rejected the testimony of PWs 1 to 5 by holding that the evidence of PWs 3, 4, and 5 was untrust-worthy and that it was unsafe to accept the testimony of other two eye-witnesses, PWs 1 and 2 for recording a conviction. Accordingly the trial court acquitted all the accused persons. Against the order of acquittal, the State preferred an appeal before the High Court. The High Court accepted the testimony of PWs 1 and 2, corroborated by the evidence of test identification parade and the testimony of PWs 3 and 4 to find the appellants guilty. Accordingly the High Court reversed the order of acquittal and convicted the appellants. Since A-4 was not identified by the PWs 1 to 4, he was given the benefit of doubt and the High Court confirmed his acquittal.

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In appeal to this court under section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, it was contended on behalf of the appellants that PWs (1 and 2) were strangers to the assailants and in the circumstances of the case they did not have the opportunity to identify the assailants and consequently their testimony was not free from doubt; the trial court was right in rejecting the testimony of these witnesses but the High Court erred in reversing the order of acquittal and convicting the appellants by accepting the testimony of these witnesses.

Allowing the appeal and setting aside the order of conviction and sentence, this Court,

HELD: 1.It is open to Supreme Court to re-examine the evidence for the purpose of satisfying itself whether the High Court was justified in reversing the order of acquittal in the facts and circumstances of the case. In an appeal against acquittal, the Appellate Court is empowered to evaluate the evidence and arrive at its own conclusion. But where the view taken by the trial court on an appreciation of the evidence is also a plausible view, the Appellate Court shall be slow to interfere with it even when a different view is possible on a reappraisal of the evidence. [728F-G]

1.1 Even when two evenly balanced views of the evidence are possible one must necessarily concede the existence of a

reasonable doubt. [731F]

2.The evidence given by the witnesses before the Court is the substantive evidence. In a case where the witness is a stranger to the accused and he identifies the accused person before the court for the first time, the court will not ordinarily accept that identification as conclusive. It is to lend assurance to the testimony of the witnesses that evidence in the form of an earlier identification is tendered. If the accused persons are got identified by the witness soon after their arrest and such identification does not suffer from any infirmity that circumstance lends corroboration to the evidence give by the witness before the Court. But in a case where the evidence before the court is itself shaky, the identification before the magistrate would be of no assistance to the prosecution. [729D-E]

2.1 The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression.

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In the instant case at the scene of the crime when no natural light was available and the street light was at a distance it is unlikely that the eye witnesses by momentary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake. Therefore the testimony of PWs 1 and 2 is unsafe to be acted upon. The overall view of the evidence taken by the Trial Court is reasonable and plausible. The High Court was not justified in interfering with the order of acquittal when the identity and involvement of the appellant was not established beyond reasonable doubt.[731A-B, E-F-G, 730H]

3. Value of identification parade depends on the effectiveness and the precautions taken against the identifying witness having an opportunity of seeing the persons to be identified before they are paraded with others and also against the identifying witness being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned. When persons who have already known the accused persons to be identified are mixed up with the witnesses the test identification is clearly vitiated and is futile. In the instant case the magistrates in conducting the test identification parade have committed a grave error because in the case of Accused No. 6 he had mixed up along with PWs 1 and 2 a person known to the accused. Similarly, in the identification of the other accused, PW-4 who claimed acquitance with Accused Nos. 2, 3 and 5 was mixed up with PWs 1 and 2. [731C-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 194 of 1979.

From the Judgment and Order dated 4.7.1978 of the Andhra Pradesh High Court in Crl. A. No. 576 of 1977.

K. Madhava Reddy, and G. Narasimhulu for the Appellants.

B. Parthasarthi for the Respondent.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. The appellants are Bollavaram Pedda Narsi Reddy (A -1), Bollavaram Chinna Narsi Reddy (A-2), Kavalakuntla Rama Subba Reddy (A-3), Duddula Venkata Subba Reddy (A-5) and Mala Prakasam (A-6) before this Court. These appellants along with accused No. 4 Duddela Ramana Reddy, were tried for the murder of one Chandrasekhara Reddy on the night of August 15, 1974. The trial court acquitted all the accused. On appeal by the State, the High Court convicted these appellants under sections 302 read with 149, I.P.C., and sentenced them to undergo imprisonment for life and also imposed short-term imprisonment for minor offence to run concurrently.

Chandrasekhara Reddy, the deceased, and the accused were residents of village Jeereddy Kotharpallai. In 1970, Accused No. 3 was elected as a Sarpanch of the village with active support of the deceased. However, differences arose between them as they supported rival groups in the election in the neighbouring village. 10 days before the incident, the deceased is stated to have openly declared that he would get Accused-3 removed by moving a no confidence motion. This according to the prosecution is the motive for the crime.

On the date of occurrence, Chandrasekhara Reddy met PW- 1 (Guddeti Balaveera Reddy) and PW-2 (Donthireddi Subba Reddy) in the hotel of Subbamma (PW-8) in the neighbouring village Proddatur. The deceased along with the two witnesses attended a cinema show at Anwar Talkies. They came out of the theatre 10 minutes earlier around 9.30 P.M. and were walking along the road towards the bus stand. When they reached near the old telephone exchange about 50 metres away from Anwar Talkies, there was an explosion of crackers. The accused persons suddenly surrounded the deceased. They were armed with daggers. They attacked him after one of them pushing aside PW-1. PW-1 fell on the barbed wire fence of the transformer and received scratches on his thigh. The deceased was stabbed indiscriminately and simultaneously by all the assailants who retreated in two different directions and the deceased died on the spot instantaneously. Besides PWs 1 and 2, who witnessed the occurrence, PW-3 Donthireddi Narayana Reddy, and PW-4 Poreddi Subba Reddy. had also seen the attack. These witnesses were passing along the road.PW- 5, Mekkamalla Balireddi, reached the scene attracted by the crowd and had seen the accused persons running away. The street light besides the electric light at a petrol bunk and the light in the bunk on the side of the road were burning at the time of the occurrence. The assailants had been identified by the witnesses in that light. The assailants were strangers to the PWs 1 and 2 but A-2, 3 and 5 were known to PWs 3 and 4 and 5 who had also acquaintance with the deceased PW-5 informed PW-7 (Polagiri Siva Reddy), the brother of the deceased, about the occurrence, while PWs 3 and 4 left the place after seeing the deceased lying at the scene. This in short is the prosecution case.

The Town Police Station is situated about two furlongs away from the place of occurrence. PW-1 along with PW-2 went to the police station and lodged the first information report. A crime ws registered against six unidentified persons. PW-16 (Sri S. Khasim Sab, Sub Inspector of Police), recorded the statement Ex. P-1. The Circle Inspector visited the scene. PW-2 was referred to the Medical Officer at 4 A.M. The inquest on the dead body was held on the next morning. The post-mortem examination revealed that deceased had sustained 54 injuries all except one being incised wounds. At the time of the inquest, the statements of PWs-2 and 7 were recorded. PW-7 suspected the involvement of Accused 2, 3 and 5. On 17.8.1974, the police dogs were pressed into service. It is stated that the sniffer went to the village of the deceased and thereafter to the houses of Accused 2 and 3. Statements of PWs 3, 4 and 5 were recorded on 18.8.1974. Accused No. 6 was arrested on 25.9.1974. A test identification parade was conducted by PW-9 (Sri G.V. Raghavaiah, Judicial Second Class Magistrate) on 31.10.1974. A-6 was identified by PWs 1, 2, 3 and 4 at the parade as recorded in Ex. P-2 proceeding. The other accused persons were arrested on 1.11.1974. PW-10 (Sri D. Sreeramulu, Judicial Second Class Magistrate), conducted the test identification parade in which as per Ex. P-3 proceeding, PWs 1,and 2 identified accused 1, 2, 3 and 5. The investigation was completed and the charge was laid against the six persons.

The learned sessions judge analysed the prosecution evidence meticulously and discarded the testimony of PWs 1 to 5. He considered PWs 3, 4 and 5 as chance witnesses, found their conduct in not disclosing the involvement of the accused persons known to them until their statements were recorded on 18.8.1974 as suspicious and strange when they had acquaintance with the deceased. PWs 3 and 4 when examined by PWs 9 and 10 for the purpose of test identification parade had given statement which vary with their earlier statement and their evidence before court was contradictory to their prior statements. It was, doubtful whether they could have seen the occurrence or identified any of the assailants. Their evidence was, therefore, rejected as untrustworthy. The testimony of the two eye witnesses PWs 1 and 2 who claimed that they were in the company of the deceased at the time of the occurrence was also not accepted by the trial court for various reasons. They were strangers to the accused persons. Their evidence regarding the identification of the assailants as the accused did not impress the trial court which pointed out that the prosecution had no consistent case regarding the source of light at the scene that these witnesses even if present at the scene when the assailants mounted the attack on the deceased could not have remained there to observe and memorize the features of the assailants and identify them after a long lapse of time. PW-1 rushed to the police station in utter confusion even without his dhoti. The witnesses were frightened and ran away. In this situation in the meagre light available, they could not have identified the assailants as the accused. The learned judge on a consideration of the medical evidence was also of the view that the occurrence could not have happened at the time mentioned by these witnesses and, said there were several suspicious features which render their version doubtful. The learned judge also pointed out that the identification parade was perfunctory and was of no assistance to the prosecution. The learned sessions judge analysed the entire evidence and considered it unsafe to accept the testimony of the two witnesses to record a conviction. In that view of the matter, he acquitted all the accused persons.

The High Court considered the reasoning as perverse and on a reappraisal of the evidence, took a contrary view. In the opinion of the High Court, PWs 1 to 4 are truthful witnesses and their evidence

could be accepted. In its view, there was no serious infirmity in the prosecution evidence. Accordingly, the High Court accepted the testimony of PWs 1 and 2, corroborated by the evidence of test identification parade and the testimony of PWs 3 and 4 to find the appellants guilty. Since accused No.4 was not identified by PWs 1 to 4, he was given the benefit of doubt and his acquittal was confirmed.

The learned counsel for the appellants has taken us through the entire evidence in the case. The appeal is one under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. It is, no doubt, open to this Court to re-examine the evidence for the purpose of satisfying itself whether the High Court was justified in reversing the order of acquittal in the facts and circumstances of the case. It is well-settled proposition of law that in an appeal against acquittal, the Appellate Court is empowered to evaluate the evidence and arrive at its own conclusion. It is equally settled law that where the view taken by the trial court or an appreciation of the evidence is also a plausible view, the Appellate Court shall be slow to interfere with it even when a different view is possible on a reappraisal of the evidence. The learned counsel for the appellants pointed out that the High Court in reversing the order of acquittal in this case had departed from these established principles and had thus erred grievously in convicting the appellants. It was submitted that the conviction recorded by the High Court essentially rests on the testimony of PWs 1 and 2. When the serious infirmities in the evidence of the other two eye witnesses PWs 3 and 4 had been brought to the notice of the High Court, it has eschewed that evidence and has placed reliance only on the testimony of PWs 1 and 2 in arriving at the conclusion that the appellants are guilty of the offence. The appellants' learned counsel, therefore, contended that if the view taken by the trial court on the testimony of PWs 1 and 2 cannot be characterised as perverse or wholly unreasonable, there is no justification for the High Court to accept that evidence as the basis of a conviction even if in its opinion the evidence of these two witnesses could have been relied on. The main plank of the argument of the learned counsel is that the witnesses being strangers to the assailants when there are circumstances to show that they did not have the opportunity to identify the assailants, their evidence involving these appellants is not free from doubt and, therefore the trial court had taken the reasonable view that it is unsafe for the court to accept that evidence to convict the accused persons. We see considerable force in the contention of the learned counsel for the appellants.

The evidence given by the witnesses before the court is the substantive evidence. In a case where the witness is a stranger to the accused and he identifies the accused person before the court for the first time, the court will not ordinarily accept that identification as conclusive. It is to lend assurance to the testimony of the witnesses that evidence in the form of an earlier identification is tendered. If the accused persons are got identified by the witness soon after their arrest and such identification does not suffer from any infirmity that circumstance lends corroboration to the evidence given by the witness before the court. But in a case where the evidence before the court is itself shaky, the identification before the magistrate would be of no assistance to the prosecution In the present case, the appellants are admittedly persons with whom the two witnesses had no previous acquaintance. The occurrence happened on a dark night. When the crime was committed during the hours of darkness and the assailants are utter strangers to the witnesses, the identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. The necessity to have the suspects identified by the witnesses soonafter their arrest also arises.

According to the prosecution, the attack on the deceased was sudden and simultaneous and the assailants slipped away in no time. Both PWs 1 and 2 had deposed that they were attracted by the explosion and when they turned back, the assailants surrounded the deceased and inflicted the stab injuries. PW-1 was pushed aside.

He fell on the fence of the barbed wire of the transformer, received scratches. His dhoti stuck to the wire. He left it there and ran to the police station in utter confusion. His P-1 does not disclose that PW-2 accompanied him, though PWs 1 and 2 stated before court that they went together. The possibility of the companions of the deceased having been scattered and gone in different directions cannot be ruled out. Even in Ex.P-1 statement what PW-1 said is that six persons attacked the deceased; they were villagers; they were wearing dhoti and kurta. One was about 45 years of age and of dark complexion, another was 30 years of age lean and yet another was also a lean person. These may be the vague impression the witness had on seeing the assailants suddenly. It is not however in evidence that the description given by PW-1 in Ex. p-1 fits in with the description of any one of the appellants. When the magistrates recorded the statements of the witnesses, they could not give any characteristic feature of any one of the assailants. The entire case depends on the identification of the appellants and the identification is founded solely on the test identification parades.

Therefore, in the absence of cogent evidence that PWs 1 and 2 by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the appellants are the real assailants. There is no whisper in Ex. P-1 that there was some source of light at the scene. The omission cannot be ignored as insignificant. When the Investigating Officer has visited the scene, he made reference to the street lights, petrol bunk light etc. Whether the street lights and the petrol bunk/ light had been burning at the time of the occurence and the spot where the incidence happened was so located as to receive the light emanating from these sources are required to be made out by the prosecution. When this significant fact is left out in the earliest record, the improvement in the course of the investigation and trial could be of no avail. The fact that there had been no proof regarding the identity of the assailants until 18.8.1974 would suggest that even persons who collected at the scene in the course of the incidence or soon thereafter were not in a position to identify any one of the assailants. Since the Investigating Officer arrived at the scene the same night and the inquest ws held in the next morning, it would have been possible for the investigating agency to collect information regarding the identity of the assailants earlier to 18.8.1974, if they had been really identified by any one of the witnesses examined in the case. When no natural light was available and the street light was at a distance it is unlikely that the eye witnesses by momentary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake. The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression. This aspect of the matter had been stressed by the trial court in appreciating the evidence of PWs 1 and 2. The High Court has ignored the inherent infirmity and failed to deal effectively with every important circumstance in the evidence which weighed with the trial court to disbelieve the prosecution case.

We have noticed that the magistrates in conducting the test identification parade have committed a grave error. In the case of Accused No.6 PW-9 had mixed up along with PWs 1 and 2 a person, Gulati who knew the accused. Similarly, in the identification of the other accused, PW-4 who claimed acquaintance with Accused Nos.2, 3 and 5 was mixed up with PWs 1 and 2. When persons who have already known the accused persons to be identified are mixed up with the witnesses, the test identification is clearly vitiated and is futile. Value of identification parade depends on the effectiveness and the precautions taken against the identifying witness having and opportunity of seeing the persons to be identified before they are paraded with others and also against the identifying witness being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned. Therefore, the evidence of the earlier identification in this case is unacceptable. The testimony of PWs 1 and 2 before court is also unsafe to be acted upon.

Thus we do not consider that the view taken by the learned sessions judge on the whole was erroneous. The overall view of the evidence taken by the learned sessions judge is reasonable and plausible, while it is true that some of the reasons given if taken individually do not appear to be substantial. Even when two evenly balanced views of the evidence are possible one must necessarily concede the existence of a reasonable doubt. Thus on a careful and anxious consideration of the evidence in the light of the reasoning adopted by the trial court as well as the High Court, we are of the opinion that the High Court was not justified in interfering with the order of acquittal when the identity and involvement of the appellants had not been established beyond reasonable doubt. We accordingly allow the appeal, set aside the conviction and sentence and maintain the order of acquittal. The bail bonds of the appellants shall stand cancelled.

TNA Appeal allowed light was available and the street light was distance it is unlikely that the eye witnesses by monetary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake. The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression. This aspect of the matter had been stressed by the trial court in appreciating the evidence of PWs 1 and 2. The High Court has ignored the inherent infirmity and failed to deal effectively with the important circumstance in the evidence which weighted with the trial court to disbelieve the prosecution case.

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TNA Appeal allowed.