ALLA CHINA APPARAO AND ORS. A

v.

STATE OF ANDHRA PRADESH

OCTOBER 10, 2002

[U.C. BANERJEE AND B.N. AGRAWAL, JJ.] B

Evidence Act, 1872:

Testimony of interested eye-witnesses—Credibility of—Held, in the absence of any infirmity in their evidence, their sworn testimony cannot be discarded —Penal Code, 1860; Sections 148, 302/149 and 506. C

Code of Criminal Procedure, 1973; Section 157(1):

Delay in sending FIR to Magistrate—Effect of—Held, Ipso facto it can not be a ground for throwing out the prosecution case if the same is found trustworthy on appreciation of evidence. D

According to prosecution, accused persons, members of prosecution party and the deceased, were residents of same village. There were two groups in the village, one led by Appellant No.1 and another by the deceased. In an election for a co-operative society, candidate supported by the deceased got elected. Accused group bore grudge against the deceased, and on the fateful day, they attacked the deceased with weapons. When PWs. 1 to 4, eyewitnesses, raised alarm, accused fled away. FIR was lodged, and nine accused persons were charge-sheeted by the police. Trial Court convicted them under Sections 302/149, 145 IPC and sentenced to life imprisonment. On appeal, High Court confirmed the conviction and sentence against the appellants but acquitted 3 accused persons. Hence this appeal by six convicted accused persons. E F

It was contended for the appellants that since High Court acquitted three accused persons having doubted the evidence of prosecution in relation to their complicity with the crime, conviction of other accused persons/appellants, relying upon the same evidence, was not justified; that PWs. were partisan witnesses and no independent witness was examined; that PWs stated that the deceased was dragged but no injury was found on the person of the deceased; that since inordinate delay was caused in G H

A forwarding of FIR to the Magistrate, accused-appellants were entitled to acquittal.

Dismissing the appeal, the Court

HELD: 1.1. Testimony of witnesses in relation to complicity of the B acquitted accused persons has been doubted by the High Court on the ground that their evidence in relation to them is not corroborated by medical evidence, which cannot be taken to be a ground while considering cases of the appellants against whom the evidence of the eyewitnesses has been found to be credible and corroborated by medical evidence as well as objective findings of the investigating Officer. [179-F-G]

C

1.2. Trial Court observed that non-examination of independent witnesses would not be fatal. All the four eyewitnesses have consistently supported the prosecution case unfolded in the first information report and their evidence is corroborated by medical evidence as well as objective findings of the police and the same has been found to be credible by trial D Court as well as the High Court. Witnesses being partisan alone cannot be a ground to discard their sworn testimonies. Trial Court was quite justified in observing that non-examination of the other witnesses by the prosecution would not be fatal to the prosecution case in view of the reasons enumerated by it and the High Court rightly did not consider this E to be a ground against the prosecution. [179-H; 180-B-C]

1.3. The view taken by the trial Court on the basis of evidence on record that when a person is dragged on a metal road there is no possibility to form dragging marks or dragging injuries as deceased was dragged only to a maximum distance of 4 or 5 yards and when the person was dragged F to such a distance, there may not be any injuries was reasonable one, as such the High Court was quite justified in not taking this to be a ground for doubting the truthfulness or otherwise of the prosecution case.

[180-E-F]

G 1.4. The expression 'forthwith' used in Section 157(1) Cr.P.C would undoubtedly mean within a reasonable time and without any unreasonable delay. It is a matter of common experience that there has been tremendous rise in the crime resulting into enormous volume of work, but increase in the police force has not been made in the same proportion. In view of the aforesaid factors, the expression 'forthwith' within the meaning of Section H 157(1) Cr.P.C. obviously cannot mean that the prosecution is required to

explain every hour's delay in sending the first information report to the Magistrate, of course, the same has to be sent with reasonable despatch, which would obviously mean within a reasonable possible time in the circumstances prevailing. Therefore, the first information report was sent to the Magistrate with reasonable promptitude and no delay at all was caused in forwarding the same to the Magistrate. [181-B-C-D-E-F]

1.5. Where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect the veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations. [182-A-B-C]

Pala Singh, **v.** *State of Punjab,* **[1972] 2 SCC 640;** *Sarwan Singh* **v.** *State of Punjab,* **[1976] 4 SCC 369;** *State of Karnataka* **v.** *Moin Patel,* **[1996] 8 SCC 167;** *Harpal Singh* **v.** *Devinder Singh and Anr.,* **[1997] 6 SCC 660;** *Shiv Ram* **v.** *State of U.P.,* **[1998] 1 SCC 149;** *Anil Rai* **v.** *State of Bihar,* **[2001] 7 SCC 318 and** *Munshi Prasad and Ors.* **v.** *State of Bihar,* **[2002] 1 SCC 351, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 698 of 2000.

From the Judgment and Order dated 12.8.1999 of the Andhra Pradesh High Court in Crl. A. No. 1604 of 1997.

Satyapal Khushal Chand Pasi, for the Appellants.

Mrs. K. Amreshwari, Miss T. Anamika and G. Prabhakar, for the Respondent.

The Judgment of the Court was delivered by

B.N. AGRAWAL, J. The six appellants along with three other accused

A persons, namely, Ramineni Gopalarao, Ala China Subba Rao and Kallikonda Venkateswarlu were convicted by the trial court under Sections 302/149 and each of them was sentenced to undergo imprisonment for life and pay a fine of Rs. 500, in default to undergo simple imprisonment for a period of three months. They were further convicted under Section 148 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for B a period of one year. Appellant nos. 2 and 3, namely, Nallamekala Venkateswarlu and Gogasani Ramaiah, who were also charged under Section 506 of the Penal Code, were acquitted of the same. All the sentences were, however, ordered to run concurrently. On appeals being preferred before Andhra Pradesh High Court, convictions and sentences of the appellants have C been confirmed whereas the three accused persons referred to above have been acquitted of the charges levelled against them.

Prosecution case, in short, is that the accused persons as well as members of the prosecution party were residents of village Kovelamudi within the district of Guntur and the deceased was also a resident of the same village. D There were two groups in the village; one led by appellant no. 1 Alla China Apparao and the deceased led the other. The deceased had worked as Sarpanch of the village for 7 years, but subsequently, appellant no. 1 became the Sarpanch. In the co-operative society elections the candidate supported by the deceased got elected. As a result of this, the accused bore grudge against E the deceased. On 25.2.1993 at about 9.30 A.M. when the deceased was coming from his fields to the village on his bicycle along with PW.1 - Thota Venkateswara Rao, the informant, who was riding on the pillion seat, all the accused are alleged to have attacked the deceased near the house of one Dasari Ankamma. Appellant no. 1 is said to have hacked him on the right wrist and accused Ramineni Gopalarao speared on the back. After receiving F injuries the deceased is alleged to have fallen down from the bicycle whereafter, other appellants, viz., Nallamakala Venkateswarlu, Gogasani Ramaiah, Sinka Venkataramiah, Gairiboyina Sivaramaiah and Thota Sivaiah besides accused Ala China Subba Rao and Kallikonda Venketeswarlu dragged the deceased to a nearby wall. Then appellant no. 1 hacked the deceased on his head and appellant no. 2 hacked him on the left side of the neck with G coconut cutting knives. Appellant nos. 3 to 6 hacked the deceased on his head and accused Ali China Subba Rao and Kallikonda Venkateswarlu speared on his back. The incident is said to have been witnessed by PWs. 1 to 4 who raised alarm whereafter the accused persons took to their heels. Stating the aforesaid facts, a first information report was lodged by the informant at the H police station on the same day at 12 Noon.

The police after registering the case took up investigation and on completion thereof submitted chargesheet against all the nine accused persons, including the appellants on receipt whereof, the learned Magistrate took cognizance and committed all of them to the Court of Sessions to face trial. A

Defence of the accused persons was that they were innocent, falsely implicated in the case on hand and no occurrence much less the occurrence alleged had taken place. B

During trial the prosecution examined 15 witnesses in all out of which PWs. 1 to 4 are eyewitnesses to the alleged occurrence and the other witnesses are Dr. G. Veera Nagi Reddi, who held postmortem examination on the dead body of the deceased, and the Investigating Officer besides formal witnesses. Upon conclusion of the trial, the accused persons were convicted, as stated above, and on appeals being preferred convictions and sentences of the appellants have been confirmed by the High Court whereas 3 accused persons, as stated above, have been acquitted. Hence this appeal by special leave. C D

Shri Satyapal Khushal Chand Pasi, learned counsel appearing in support of the appeal submitted that the High Court having acquitted the three accused persons after doubting the evidence of the four eyewitnesses, PWs. 1 to 4, in relation to their complicity with the crime on the ground that the same did not fit in with the medical evidence, was not justified in upholding convictions of the appellants by placing reliance upon the very same evidence. It appears that according to the evidence of these witnesses the aforesaid three accused persons inflicted injuries on the back of the deceased and in the opinion of the High Court the deceased received only one injury on the back side, therefore, the veracity of evidence of these witnesses in relation to the said accused persons has been doubted. In our view, it is not possible to accept the submission. The testimony of witnesses in relation to complicity of those accused persons has been doubted on the ground that their evidence in relation to them is not corroborated by medical evidence, which cannot be taken to be a ground while considering cases of the appellants against whom the evidence of the eyewitnesses has been found to be credible and corroborated by medical evidence as well as objective findings of the Investigating Officer. E F G

Learned counsel next submitted that all the four eyewitnesses, namely, Pws. 1 to 4 were partisan witnesses and no independent person was examined, although many independent villagers arrived at the place of occurrence. While considering the submission on this score, the trial court observed that their non-examination would not be fatal. All the four eyewitnesses have consistently H

A supported the prosecution case unfolded in the first information report and their evidence is corroborated by medical evidence as well as objective findings of the police and the same has been found to be credible by trial court as well as the High Court. Learned counsel appearing on behalf of the appellants could not point out any infirmity in their evidence, excepting saying that they are partisan witnesses which alone, in our view, cannot be a ground to discard B their sworn testimonies. According to us, the trial court was quite justified in observing that non-examination of the other witnesses by the prosecution would not be fatal to the prosecution case in view of the reasons enumerated by it and the High Court rightly did not consider this to be a ground against the prosecution.

C

Learned counsel then submitted that according to the evidence of PWs. 1 to 4 the deceased was dragged to some distance and latter portion of the incident had taken place thereafter, but curiously enough neither any dragging marks were found at the place of occurrence nor any injury was found on the person of the deceased as a result of dragging. While considering this D submission, the trial court observed that, "It is true that PWs. 1 to 4 unanimously deposed that the deceased was dragged to dilapidated wall and thereafter all accused inflicted injuries and major portion of the incident took place there itself. But it is also pertinent to note the distance to which the accused dragged the deceased. It was elicited in the cross-examination of E PW.1 and other witnesses that the deceased was dragged to 4 to 5 yards. PW.1 says the distance as 5 to 6 yards while PWs. 2 and 3 say it as three yards. Thus it indicates that the deceased Basari Sankararao was dragged for about 3 to 4 yards and it is a hard surface road. It can be seen from the evidence of PW.3 that it is a metal road. In such a case there is no possibility to form dragging marks or dragging injuries as deceased was dragged only F to a maximum distance of 4 or 5 yards and when the person was dragged to such a distance, there may not be any injuries and therefore the contention raised on behalf of the accused that there are no injuries by dragging or otherwise do not render any assistance to their contention". In our opinion, the view taken by the trial court was reasonable one, as such the High Court G was quite justified in not taking this to be a ground for doubting the truthfulness or otherwise of the prosecution case.

Learned counsel further submitted that though the occurrence is said to have taken place on 25.2.1993 at about 9.30 A.M. and first information report was lodged at 12 Noon, but it was received by the Magistrate at 6.00 H P.M., as such there was inordinate delay in sending the first information

report to the Magistrate on which ground alone the appellants were entitled to an order of acquittal in their favour. What is required under Section 157(1) of the Code of Criminal Procedure is that if from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall, forthwith send a report of the same to a Magistrate empowered to take cognizance of such an offence upon a police report. The expression 'forthwith' used in Section 157(1) would undoubtedly mean within a reasonable time and without any unreasonable delay. In the case on hand, distance from the police station to Magistrate's court was about 20 to 25 Kms. PW.11 - Constable was entrusted with the first information report by the then Sub-inspector of Police for being made over to the Magistrate. This witness stated that after handing over the first information report, the Sub-inspector of Police sent him to the place of occurrence where as per his instructions he stayed till 5 P.M. Later, the Inspector of Police made over the dead body of the deceased to this witness with instructions to take the same to the Government Hospital, Guntur, and to hand it over to the hospital authorities and after handing over the dead body to the hospital authorities, he went to the Magistrate and delivered the first information report to him at 6 P.M. This witness further stated that there were only six constables attached to the police station on the relevant date which goes to show that at the concerned police station there was no full strength of constables. This apart, it is a matter of common experience that there has been tremendous rise in the crime resulting into enormous volume of work, but increase in the police force has not been made in the same proportion. In view of the aforesaid factors, the expression 'forthwith' within the meaning of Section 157(1) obviously cannot mean that the prosecution is required to explain every hour's delay in sending the first information report to the Magistrate, of course, the same has to be sent with reasonable despatch, which would obviously mean within a reasonable possible time in the circumstances prevailing. Therefore, in our view, the first information report was sent to the Magistrate with reasonable promptitude and no delay at all was caused in forwarding the same to the Magistrate. In any view of the matter, even if Magistrate's court was close by and the first information report reached him within six hours from the time of its lodgment, in view of the increase in work load, we have no hesitation in saying that even in such a case it cannot be said that there was any delay at all in forwarding the first information report to the Magistrate. Thus, we do not find any substance in this submission as, according to us, the first information report was promptly despatched to the Magistrate and received by him without any delay whatsoever. A question that now arises

A B C D E F G H

A is that where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, what would be its effect upon the prosecution case. In our view, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise B trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely C roping in the accused persons after due deliberations. Reference in this connection may be made to decisions of this Court in the cases of *Pala Singh* v. *State of Punjab*, [1972] 2 SCC 640, *Sarwan Singh* v. *State of Punjab*, [1976] 4 SCC 369, *State of Karnataka* v. *Moin Patel*, [1996] 8 SCC 167, *Harpal Singh* v. *Devinder Singh and Anr.*, [1997] 6 SCC 660, *Shiv Ram* v. *State of U.P.*, [1998] 1 SCC 149, *Anil Rai* v. *State of Bihar*, [2001] 7 SCC D 318, and *Munshi Prasad and Ors.* v. *State of Bihar*, [2002] 1 SCC 351.

Lastly it was submitted that no blood was found on the weapons of assault recovered by the Investigating Officer. It may be stated that the trial court in its judgment has taken note of this fact and did not draw any inference E therefrom against the prosecution in view of the fact that the weapons were recovered from a pipe in which water was flowing, as such non-existence of blood thereon was quite natural. We do not find any infirmity in reasoning of the trial court on this score.

In view of the foregoing discussion, we are of the opinion that the High F Court has not committed any error in upholding convictions and sentences awarded against the appellants.

Accordingly the appeal fails and the same is thus dismissed.

S.K.S. Appeal dismissed.