REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2016 OF 2013

MEKALA SIVAIAH … APPELLANT (S)

VERSUS

THE STATE OF ANDHRA PRADESH … RESPONDENT (S)

JUDGMENT

KRISHNA MURARI, J.

1. The appellant has filed the present appeal against the judgment and order dated 22.06.2012 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad (hereinafter referred to as '**High Court**') in Criminal Appeal No.811/2008, whereby the High Court has dismissed the criminal appeal and upheld the judgment dated 04.04.2008 passed by the Court of Sessions Judge at Guntur (hereinafter referred to as '**Trial Court)** whereunder, the appellant was convicted for the offence under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as '**IPC**') and was sentenced to undergo imprisonment

for life and also to pay a fine of Rs. 500/- and in default to suffer simple imprisonment for three months.

2. Briefly, the facts relevant for the purpose of this appeal are as follows:

On 06.09.2006, the deceased (father of PW-1) and PW-1 went to the 14th mile centre of Lemalle Village to sell their vegetables. While PW-1 was getting the vegetables weighed, the deceased crossed the road and went to the shop of PW-3 to purchase tobacco leaves. PW-2 and PW-4 were also present at the place of occurrence. Having seen the deceased, the appellant, armed with a knife, came to the shop of PW-3 and sprinkled chilli powder into the eyes of the deceased, and stabbed him on the chest and abdomen, resulting in grievous injuries. The appellant immediately fled from the spot after seeing PW-1 to 4. The deceased was taken to the Government Hospital Amaravathi, where the doctors declared him dead.

3. On the basis of the aforesaid report given by PW-1, PW-7 registered the case being FIR No. 120/2006 dated 06.09.2006 at PS Amaravathi for the offence punishable under Section 302 IPC. Thereafter, PW-8 and PW-9 visited the place of occurrence, held an inquest over the dead body of the deceased, examined the eyewitnesses, arrested the appellant, and filed charge sheet against

him. On 26.12.2007, charges under Section 302 IPC were framed and the appellant pleaded not guilty and claimed trial.

4. In order to substantiate the case, the prosecution examined nine witnesses and there was no oral or documentary evidence adduced by the defence side.

- PW-1: Madhirapalli Srinivasa Rao, Son of the deceased
- PW-2: Shaik China John
- PW-3: Shaik Subhani, owner of the tobacco shop
- PW-4: Kovvuri Venkateswara Rao, belong to the same village as the deceased.
- PW-5: Dr. G. Peter Paul, who conducted post-mortem on 07.09.2006.
- PW-6: Kalapala Venkaiah, Panchayat Secretary of Endrol Village.
- PW-7: I. Govindarajulu, Sub-Inspector of Police, District Crime Records Bureau.
- PW-8: T. Ravindra Babu, Inspector of Police.
- PW-9: K. Jagadishwara Reddy, Circle Inspector of Police.

5. The Trial Court after analysing the statement made by the prosecution witnesses, vide judgment and order dated 04.04.2008 held the appellant guilty of offence under Section 302 IPC and sentenced him to imprisonment for life.

6. Being aggrieved, the appellant filed Criminal Appeal No. 811 of 2008 before the High Court challenging the Trial Court's order of conviction and sentencing. Vide judgment and order dated 22.06.2012, the High Court confirmed the judgment of the Trial Court and observed that there is no iota of doubt in the case of the prosecution and therefore, the prosecution has discharged its burden in proving the guilt of the accused for the offence under Section 302 IPC beyond a reasonable doubt.

7. We have heard Mr. Ravindra S. Garia, Learned Counsel appearing for the appellant and Mr. Mahfooz A. Nazki, Learned Counsel appearing for the State.

8. Mr. Ravindra S. Garia, Learned Counsel appearing for the appellant vehemently submitted that the weapon(knife) alleged to have been used by the appellant in the commission of the offence was not seized by the police and non-seizure of the said weapon is fatal to the case of the prosecution. It was further submitted that the prosecution failed to examine the scribe of the FIR and that there was a delay in sending the FIR to the court.

9. It was further submitted that the presence of eyewitnesses in the place of occurrence is very doubtful and incredible in the circumstances and becomes

further incredible as none of the so-called eyewitnesses is even able to describe the weapon of the offence, despite the prosecution case being that the appellant was apprehended by the crowd but still he managed to run away. It was further submitted that the inquest report clearly shows that the alleged eyewitnesses merely expressed their doubt with respect to the appellant that, due to previous enmity the appellant might have killed the victim and this shows they only had a suspicion and were not witnesses to the incident.

10. It was further submitted that the falsity of the prosecution case and the theory of the appellant running away in the backdrop of his receiving treatment for such serious injury in his leg that he had become invalid for doing labour work and was receiving treatment for the immediately preceding last six months further makes the case against the appellant extremely doubtful.

11. Per contra, Mr. Mahfooz A. Nazki, Learned Counsel for the Respondent State has duly supported the conviction and sentencing of the Appellant with reference to the material on record and as regards the conviction of the Appellant, it was submitted that the judgment passed by the Trial Court and the High Court after thorough appreciation of the evidence does not suffer from any infirmity and call for no interference. There are no grounds made for reversal of the conviction.

12. It was further submitted that the conviction of the Appellant in the present case is based on the testimony of four eye-witnesses and the same is absolutely consistent and reliable.

13. We have carefully considered the submissions made at the bar and perused the materials placed on record.

14. Before adverting to the merits of the contention raised, it is important to reiterate that Article 136 of the Constitution of India is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice.

15. It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article is not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence

then this Court is not only empowered but is well expected to interfere to promote the cause of justice.

16. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the Trial Court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact.

17. Reference may be made to the judgment of two-Judge Bench of this Court in the case of ***Subedar Vs. The State of U.P.***[1] wherein this Court, while considering the scope of interference with the concurrent findings based on a proper appreciation of evidence, has observed as under :-

> *"This Court undoubtedly does not normally proceed to review and reappraise for itself the evidence in criminal cases when hearing appeals under Article 136. But when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or mistake in the reading of evidence or by ignoring material evidence- then this Court is not only empowered but is expected to interfere to promote the cause of justice."*

1 (1970) 2 SCC 445

18. In ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat***[2], a two-Judge Bench of this Court held that this Court does not interfere with the concurrent findings of fact unless it is established:

i. That the finding is based on no evidence; or

ii. That the finding is perverse, it being such as no reasonable person could arrive at even if the evidence was taken at its face value; or

iii. The finding is based and built on inadmissible evidence which evidence, excluded from vision would negate the prosecution case or substantially discredit or impair it, or

iv. Some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.

This Court does not function as a regular Court of Appeal in every criminal case. Normally, the High Court is a final court of appeal and this Court is only a court of special jurisdiction. This Court would not therefore reappraise the evidence to determine the correctness of findings unless there are exceptional circumstances where there is manifest illegality or grave and serious miscarriage of justice, for example, the forms of legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted.

2 (1983) 3 SCC 217

19. The principles governing the interference by this Court in a criminal appeal by way of special leave were further enumerated in ***Dalbir Kaur & Ors. Vs. State of Punjab***[3] as under :-

> *"(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;*
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> *(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;*
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> *(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;*
>
> *(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;*
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> *(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence."*

20. The scope and width of appeals under Article 136 has been elaborately articulated by a three-Judge Bench of this Court in ***Pappu Vs. State of Uttar Pradesh***[4]. This judgment authored by one of us (Hon'ble Dinesh Maheshwari, J.)

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3 (1976) 4 SCC 158

4 2022 SCC OnLine SC 176

after noticing catena of judgments on the issue, the three-Judge Bench summarized the principles as under :-

> *"101. In summation of what has been noticed hereinabove, it is but clear that as against any judgment/final order or sentence in a criminal proceeding of the High Court, regular appeals to this Court are envisaged in relation to the eventualities specified in Article 134 of the Constitution of India and Section 2 of the Act of 1970. The present one is not a matter covered thereunder and the present appeals are by special leave in terms of Article 136 of the Constitution of India. In such an appeal by special leave, where the Trial Court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappreciation of evidence. Of course, if the assessment by the Trial Court and the High Court could be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process leading to serious prejudice or injustice, this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare and exceptional cases of manifest illegality. Tersely put, it is not a matter of regular appeal. This Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappreciation of evidence so as to take a view different than that taken by the Trial Court and approved by the High Court."*

21. Coming to the facts of present case at hand, the deceased was an agriculturalist and on 14.03.2006, during a quarrel between PW-1 and the

appellant, PW-1 gave a beating to the appellant with a stick. Thereupon, the appellant gave a report against PW-1 in Amaravathi police station and the same was registered as Crime No. 35 of 2006 for the offence punishable under Section 324 and 506 of IPC. After completion of investigation, the police filed charge sheet against PW-1 and the same is pending. In that connection, the appellant demanded money from PW-1 for treatment of his knee to which both the deceased as well as PW-1 agreed for payment but on a later date, the deceased as well as PW-1 refused to pay the appellant. Due to inability to get a treatment, the appellant became invalid from labour work and that resulted in appellant developing a grudge against PW-1 and his father(deceased). Thereafter, on seeing the deceased coming towards the tobacco shop of PW-3 on 06.09.2006, the appellant stabbed him on the chest and abdomen causing grievous injuries to him which ultimately lead to the death of the deceased.

22. The contentions raised by the Appellant are on the weaker side in relation to testimonies of prosecution witnesses as it has been contended that PW-1 to PW-4 are the supporters of Telugu Desam Party and their evidence were contradictory with respect to the nature of injuries inflicted upon the deceased, place of occurrence etc. The testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by

this Court in ***Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra***[5]***,*** wherein while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, it was held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. In paragraph 42 of the judgment, it has been held as under :-

> *"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."*

23. The same view stands reiterated in the concurring opinion expressed by this Court in ***State of MP Vs. Ramesh***[6].

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5 (2000) 8 SCC 457

6 (2011) 4 SCC 786

24. The facts and evidence in present case has been squarely analyzed by both Trial Court as well the High Court and the same can be summarized as follows:

i. The prosecution has discharged its duties in proving the guilt of the appellant for the offence under Section 302 IPC beyond reasonable doubt.

ii. When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

iii. If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

iv. The deceased has been attacked by the appellant in broad daylight and there is direct evidence available to prove the same and the motive behind the attack is also apparent considering there was previous enmity between the appellant and PW-1.

25. Having considered the aforesaid facts of the present case in juxtaposition with the judgments referred to above and upon appreciation of evidence of the eyewitnesses and other material adduced by the prosecution, the Trial Court as well as the High Court were right in convicting the appellant for the offence

under Section 302 IPC. Therefore, we do not find any ground warranting interference with the findings of the Trial Court and the High Court.

26. As a result, appeal stands dismissed.

….....……....…….,J
(DINESH MAHESHWARI)

…...….....….....J.
(KRISHNA MURARI)

NEW DELHI;
15TH JULY, 2022