

THE STATE OF ANDHRA PRADESH

v.

M.NARASIMHA RAO

(Criminal Appeal No. 1361 of 2003)

AUGUST 27, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Penal Code, 1860: s.302 – Murder – Conviction by trial court – Based on medical evidence and evidence of wife and son of the deceased – High Court reversed the order of conviction holding that the son of the deceased was not eye-witness and the delay in filing FIR and sending the special report to the magistrate was fatal to prosecution case – Appeal by State against the order of acquittal – Held: The eye-witness account was fully corroborated by the medical evidence – Post mortem report stated several cut injuries on the face and neck of the deceased – The violence and intensity of the attack depicted that it must have taken place over some time and it would not only have enabled the son of the deceased to reach the place of incident but also his wife to have properly identified the accused as he was also a resident of the same village – Incident took place at midnight – The wife of the deceased aged 75 years gave the statement to the Village Administrative Officer in the morning and the information was forwarded to the police station – Delay thereafter was beyond her control – Thus, there was no delay in the recording of the FIR – In the face of unimpeachable evidence, the late delivery of the special report by itself would not be fatal to prosecution case – Accused convicted u/s 302.*

*Appeal against acquittal – Acquittal by High Court – Scope of interference by Supreme Court – Discussed.*

**The prosecution case was that two months prior to**

A the incident, a quarrel took place between the  
respondent-accused and PW-1. PW-3, the brother of PW-  
1 went to the house of the accused and gave a sound  
thrashing to him. On the day of incident, PW-3 planned  
to go on a pilgrimage with his family. He requested his  
B mother (PW-2) and his father, the deceased to sleep in his  
house. Accordingly, the deceased and PW-2 went to the  
house of PW-3 to sleep there. At about mid-night, the  
accused went to the house of PW-3, armed with a knife  
and on seeing a person sleeping on a cot and believing  
C him to be PW-3 attacked him with the knife. On hearing  
the commotion, PW-2 sleeping on a mat nearby,  
screamed and tried to save her husband. The accused  
pushed her down. In the meantime, PW-1, whose house  
was nearby, rushed to the spot and witnessed the  
D incident and tried to catch the accused but the accused  
managed to escape. In the morning at 8 A.M., PW-1 went  
to the Village Administrative Officer (PW-8) and narrated  
the incident to him. PW-8 sent the information to the  
police station and FIR was then recorded.

E The trial court relied upon the evidence of PW-1 and  
PW-2 as corroborated by the statement of PW-3 with  
regard to the motive and convicted the accused under  
Section 302 IPC. The High Court reversed the findings of  
the trial court and acquitted the accused. While recording  
F the order of acquittal, the High Court held that the  
evidence of PW-1 was not reliable as he was not present  
at the time of incident and the delay in lodging FIR and  
sending the special report to the magistrate was fatal to  
the prosecution case. The instant appeal was filed by the  
G State challenging the order of acquittal.

Allowing the appeal, the Court

HELD: 1. Ordinarily, interference by the Supreme  
Court on a re-appraisal of the evidence should not be  
H made particularly in a case of an appeal against acquittal,

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 the Supreme Court to ignore this aspect and the circumstances may, thus, warrant interference. The instant case hinges on the testimony of PW1 and PW2. The eye-witness account was fully corroborated by the medical evidence. The doctor, PW-11 who conducted the post mortem had found several cut injuries on the face and neck of the deceased. The violence and intensity of the attack showed 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. The eye witnesses fully supported the prosecution story. [Paras 5, 6, 7] [539-E-G; 540-E; 541-B-D-E]

2. 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 was 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 was 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, 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. Accordingly, the judgment of the High Court is set aside and the accused respondent is convicted under Section 302, IPC and is sentenced to undergo RI for life. [Para 8] [541-F-H; 542-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1361 of 2003.

A From the Judgment & Order dated 18.04.2002 of the High Court of Andhra Pradesh at Hyderabad in CrI. Appeal No. 1390 of 2000.

B I. Venkata Narayana, Anuradha Rustogi, D. Bharathi Reddy for the Appellant.

Ms. M. Qamaruddin, M. Qamaruddin, Ambar Qamaruddin for the Appellant.

The Judgment of the Court was delivered by

C **HARJIT SINGH BEDI, J.** 1. This appeal against acquittal at the instance of the State of Andhra Pradesh arises out of the following facts.

D 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  
E 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 PW2 and his father to sleep in his house while he was away. Accordingly, the deceased and PW2  
F 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,  
G 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  
H 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

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A 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 under Section 302 of the IPC but did not record any conviction under Section 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 an not 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.

G 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

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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

A 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

B 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,

C 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

D 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

E 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 hereinbelow:

F "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

G 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

H 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.”

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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.

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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.

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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

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A 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 under Section 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.

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Appeal allowed.