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RAVI

v.

STATE REP. BY INSPECTOR OF POLICE

AUGUST 12, 2004

B

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860; Sections 148, 302, 324, 364 and 448 :

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Unlawful assembly—Assault and murder—Evidence of eye witnesses related to deceased—Reliance upon—Trial Court found accused A-1 guilty of offences under Sections 148, 302, 364 and 448 and A-2 under Sections 148, 324 and 448 and sentenced them accordingly—However, other four accused were acquitted as not identified—Affirmed by High Court—On appeal, Held : Weapons used in committing the crime were recovered at the instance of eye witnesses—Absence of motive on the part of prosecution witness/mother of the deceased to wrongly identify the accused—Prosecution witnesses correctly identified the accused in the identification parade—Evidence of eye witnesses cannot be rejected merely because they were related to deceased—Evidence of eye witnesses reliable and sufficient to implicate the accused—Hence, guilt of the accused clearly established.

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Code of Criminal Procedure, 1973 :

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Raising of issue of jurisdiction before the Supreme Court—Held : Accused cannot be allowed to raise it before Supreme Court for the first time since it was never raised by the accused before the Trial Court or before the High Court.

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Accused-Appellant and 5 others armed with deadly weapons formed themselves into an unlawful assembly. In furtherance of their common object to cause death of the deceased due to previous enmity, they trespassed into the house of brother of the deceased. Accused A-1 and others had inflicted bleeding injuries on the deceased. PW1, brother of the deceased and another brother, took the deceased to a Hospital in injured condition where the deceased succumbed to his injuries. A complaint was lodged by them. Police investigated the matter and submitted charge-sheet against A-1, A-2 and four others alleging commission of offences by them punishable under Sections

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148, 149, 302 r/w 149, 324 and 448 r/w 149 IPC. Trial Court found A-1 guilty of offences punishable under Sections 148, 302, 364 and 448 and A-2 of committing offences punishable under Sections 148, 324 and 448 and sentenced them accordingly. However, it acquitted other accused persons as they were not identified by the eye-witnesses. High Court affirmed the judgment of trial court holding that the evidence of PW-2, mother of the accused, established beyond doubt involvement of accused A-1 and A-2 in attacking and killing her son. Hence, the present appeals preferred by A-1.

Accused-appellant contended that the reasons advanced by the prosecution witnesses were not sufficient to explain the enormous delay in filing the FIR; that the complaint was lodged by the complainant PW1, brother of the deceased, at a police station which is outside the jurisdiction of the alleged place of occurrence of the crime; and that non-examination of the material witnesses more so of the eye witnesses is fatal to the prosecution.

Dismissing the appeals, the Court

HELD : 1. Prosecution's case is based on the statements of eyewitnesses, namely, PW2, PW3 and PW6, which clearly implicate the accused and that A-1 and A-3 had grudged against the deceased consequent to the death of their sister, wife of the deceased. A-1 and A-2 also gave confession statements independently and on the basis of the statements of A-1, the knife MO2 and the shirt MO3 were recovered under mahazar Ext. P6 and on the basis of the statement of A-2 the wooden reaper MO1 was recovered under Ext. P5. MO 1 to 3 contained blood stains and the blood on the shirt was identified as human blood. It is settled law that the evidence of eyewitnesses cannot be rejected merely because they are related. The evidence of PW2 in the present case is reliable as there is no strong motive or ill-will on the part of PW2 to exonerate the real person who caused the injuries on her son and to implicate the accused. [490-E-F-G-H]

2. The facts of the instant case clearly go to show that there is no delay in lodging the complaint. [491-E]

3. PW8, Judicial First Class Magistrate, conducted identification parade in the Central Jail premises. Three chances were given to the

A witnesses PW2 and another to identify accused A-2 and they had correctly identified him in all the three chances. [491-F-G]

B 4. The point of jurisdiction was neither urged before the Sessions Court nor before the High Court and was raised by the appellant for the first time before this Court. Hence, this Court declines to entertain this plea at this belated stage. [491-H; 492-A]

C 5.1. Evidence of PW2, mother of the deceased, is cogent and convincing. In her evidence she stated that the deceased, her son, has been living with a woman in a house nearby their house. About a week prior to the death of the deceased, the woman committed self immolation by pouring kerosene on herself and died after four or five days. **D** A-1, brother of the said woman and their mother, and other brothers thought that the deceased was responsible for her death. Accused A1 and six others had assaulted the deceased, who succumbed to his injuries in the hospital. PW2 also identified accused A2 before the Magistrate as the one who beat her son apart from A-1. [492-B-C-D-E-F]

E 5.2. PW7-Medical Officer who conducted the post mortem examination on the dead body, opined that all the injuries in Ex. P7 were ante-mortem in nature. Injuries 1 and 2 with the corresponding internal injuries are fatal in nature and sufficient to cause death in the ordinary course of nature. [492-G, 493-D]

F 6. The prosecution has established its case that A-1 has caused the death of the deceased and the evidence of PW2, PW3 and PW6 clearly implicate the accused. PW2, mother of the deceased, knows A-1. She has in categorical terms stated that on the date of the incident A-1 came along with 6 persons and entered her house and attacked the deceased. She clearly identified A-1 as the person who was having the knife and assaulted the deceased. She has also identified A-1 at the identification parade. Hence, the prosecution has clearly established the guilt of the **G** accused-appellant beyond any reasonable doubt. [493-E-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1150-1151 of 2003.

H Form the Judgment and Order dated 14.2.2003 of the Madras High Court in CrI. A. Nos. 315 and 539 of 1999.

Ms. Prashanthi Prasad, Ms. Deepti and Dileep Poolakkut for the Appellant. A

V.G. Pragasam for the Respondent.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : The above appeals were filed against the judgment dated 14/02/2003 passed by the High Court of Judicature at Madras in Criminal Appeal Nos. 315 and 539 of 1999 filed by A-1 Ravi and A-2 Pakkaraji. The appellant herein was the appellant in Criminal Appeal No. 315 before the High Court and was A-1 before the Court of Additional Sessions Judge, Pondicherry. The learned Sessions Judge acquitted A-2 of the offence under Section 302 I.P.C. The State also has not filed any appeal against the said acquittal of A-2 of the offence of murder. B C

The following charges were made against the accused: D

The Inspector of Police, Villianur Circle, Pondicherry has laid a charge sheet against the accused alleging that on 6.3.1996 at about 1230 hrs. the accused A-1 (Ravi), A-2 (Raja @ Pukkaraji) and four others alleging that they formed themselves into an unlawful assembly, armed with deadly weapons with a common object of such assembly, viz., to cause the death of one Shanmugam due to previous enmity and in furtherance of common object of such assembly, trespassed into the house of Adhikesavan, the brother of the deceased Shanmugam and caused bleeding injuries to Shanmugam by assaulting him with deadly weapons, all the accused chased him and forcibly took him in an auto-rickshaw to maidan near Pavanar Nagar, Reddiarpalayam, Pondicherry beat him with deadly weapons left him with bleeding injuries and the deceased Shanmugam subsequently died in the General Hospital, Pondicherry and thus the accused had committed the offence of murder of Shanmugam and thus committed offences punishable under Sections 148, 149, 448/149, 364/149 & 302/149. E F G

On behalf of the prosecution, PW-1 to PW-11 were examined and Exs. P1 to 22 and MOs.1 to 3 were marked.

The case of the prosecution, in brief, is as follows:- H

A The brother of the deceased Shanmugam, along with other brothers
Krishnamurthy, deceased Shanmugam Siva and sister Gangabhavani were
staying in Pudhusaram and Krishnamurthy after marriage went to his
father-in-law's house. About 8 years prior to the incident, the deceased
B Shanmugam developed intimacy with one Sarasu and was living separately
with her. About six months prior to the incident he came and started living
five or six houses away from his house. About two or three days prior
to the death of Shanmugam i.e. on 4.3.1996 Shanmugam's wife Sarasu
committed suicide by self-immolation by pouring kerosene and setting fire
to herself and died. Shanmugam came and told PW1 that the brothers of
C Sarasu thought that he was responsible for suicide and they were threatening
him and he also told that while he tried to save Sarasu, he sustained burn
injuries on his hand and wanted to take treatment and so he wanted to stay
in their house and his father also consented for the same and started staying
with them and on 6.3.1996 A1-Ravi s/o Munuswamy came along with five
D persons armed with knife and sticks and entered the house and asked
whether Shanmugam was there and they got into the room where
Shanmugam was lying and beat him there and Shanmugam ran out and
the crowd chased him and she asked P.W.1 to find out what had happened
to Shanmugam. PW1 along with his brother Krishnamoorthy went in
search of him and he saw Shanmugam with bleeding injuries lying down
E on a maidan behind the house of A1 Ravi slightly breathing and without
speech. They took Shanmugam in an autorickshaw to General Hospital,
Pondicherry. He returned home at 4.30 p.m. and informed his mother
about the same. He then lodged a complaint before police. Ex.P.1 is the
complaint given by him. Shanmugam died on 7.3.96 due to the injuries
sustained by him on 6.3.96.

F The Sessions Judge, Pondicherry, on consideration of the evidence
on record, came to the conclusion that the evidences of PWs 2, 3 and 6
showed that A-1 and A-2 were accompanied by five other persons and that
A-1 and A-2 assaulted the deceased Shanmugam and that A-3 to A-7 were
G not identified by any witnesses. The Sessions Judge further held that the
first accused committed the offence under Sections 148, 364, 448 and 302
and for the main offence, he was sentenced to undergo imprisonment for
life. For other offences, sentence of imprisonment ranging from 1 to 7
years were imposed. The second accused was found guilty of offence
punishable under Sections 148, 448 and 324.

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Aggrieved by the same, appeals were filed before the High Court by A-1 and A-2. The High Court, on consideration of the evidence on record came to the conclusion that the conviction of the accused for the offences is supported by legal materials and there is no illegality in the judgment under challenge. The High Court was also of the opinion that the delay in lodging the complaint has been reasonably and satisfactorily explained and that there was no suspicious circumstances at all in the oral evidence of PW-1. The High Court has also held that the evidence of PW-2, who is an eye witness to the occurrence is convincing and that the infirmities which are referred to in Ex.P-1 or Ex.P-18 would not affect the oral evidence of PW-2 regarding the occurrence. The High Court felt that the omissions pointed out in Ex.P-1 and in Ex.P-18 were too trivial in the fact, and the evidence of PW-2 established beyond doubt the involvement of A-1 and A-2 in attacking the deceased.

Dissatisfied with the above judgment, the appellant, A-1, preferred these appeals by way of special leave petitions before this Court.

We heard Ms. Prashanthi Prasad, learned counsel appearing for the appellant and Mr. V.G. Pragasam, learned counsel appearing for the State. We have been taken through the evidence on record and the judgment rendered by the Sessions Court and also of the High Court.

Learned counsel appearing for the appellant raised the following submissions:

- (1) The reasons advanced by the prosecution witnesses were not sufficient to explain the enormous delay in filing the FIR and that the High Court has erred in coming to the conclusion that the delay has been explained properly.
- (2) The complaint lodged by the complainant PW-1 at the Reddiarpalayam is well outside the jurisdiction of the alleged place of occurrence and that the High Court has failed to appreciate that there seems to be no reason or explanation as to why PW-1 has not given the complaint at the D Nagar Police Station which is the nearest one and the one to which the jurisdiction pertains to.
- (3) The prosecution has failed to establish beyond reasonable doubt the guilt of the accused, appellant herein.

A (4) The non-examination of the material witnesses more so of the eye-witnesses is fatal to the prosecution and hence the impugned judgment of the High Court ought to be set aside.

B *Per contra*, learned counsel appearing for the State submitted that the High Court, on a careful consideration of the evidence on record and under the circumstances, has rightly found A-1 guilty for the offence under Section 302 IPC and is not wrong in relying on the evidence tendered by the witnesses who were relatives.

C In the background facts of this case, the point for determination is whether the prosecution has proved its charge against the appellant A-1 who was convicted and sentenced to undergo the various sentences imposed on him by various sections of the code.

D We have gone through the evidence on record and the judgments rendered by the Sessions Court and also of the High Court.

E The contention of the learned counsel for the appellant, in our opinion, has no force since the prosecution sought to prove its case based on the eye witnesses to the incident PW2, PW3 and PW6 which clearly implicate the accused and that A1 and A3 had grudged against the deceased consequent to the death of their sister Sarasu. A1 and A2 also gave confession statements independently and on the basis of the statements of A1, the knife MO2 and the shirt MO2 were recovered under the mahazar Ext P6 and on the basis of the statement of A2 the wooden reaper MO1 was recovered under Ext. P5. MO1 to 3 contained blood stains and the blood on the shirt was identified as human blood.

F Learned counsel for the appellant contended that the evidences of PW1 and PW2 should not be relied upon since they are related and are interested witnesses and there was no confession and the recovery alleged to have been effected by the prosecution. We are unable to appreciate this contention.

G It is settled by catena of cases by this Court that the evidence of eye witnesses cannot be rejected merely because they are related. In such a situation, the evidence of PW2 in the present case, there is no strong motive or ill-will on the part of PW2 to exonerate the real person who caused the H injuries to her son and to implicate the accused.

Learned counsel for the appellant contended that there is inordinate delay in lodging the complaint. This contention, in our opinion, has no leg to stand. A

On the fateful day, all the six accused were appeared armed with knife and stick and by entering the room where Shanmugam was sleeping. A1 attacked him with a knife followed by another person with a dark complexion hitting him with a stick. Out of fear, Shanmugam started running out of the house for safety chased by all the accused, which was watched by P.W.2 and others at home. P.W. 2 tried to reach them but she could not and she came to know that her son was taken in an autorickshaw by the assailants. At 1.30 p.m., on that day her other son, namely, P.W.1 came home, to whom she informed as to what happened and requested him to find out as to what happened to Shanmugam, since deceased. He came home around 4.30 p.m. and informed her that Shanmugam his brother that he is lying in an open ground near Bhoomiyanpet and that he had admitted him in the hospital. She had identified the person having dark complexion, in the test identification parade held, as A2 P.W.1 is admittedly not an eye-witness to the occurrence but had stated as to what his mother told him about the occurrence on reaching the house at 1.30 p.m. On hearing about the same from his mother, he went in search of his brother and he found his brother lying in an open ground struggling for life. Accordingly, after admitting him in the hospital, he came home at 4.30 p.m. informed his mother/P.W.2 and then went to the police station to lodge the complaint, Ex.P.1. The above facts would clearly go to show that there is no delay in lodging the complaint. B C D E

PW8 Thiru P. Nallathambi Judicial First Class Magistrate has stated that on 25.3.96 he received a requisition to conduct identification parade as per Ex.P10. Consequently, he conducted identification parade on 28.3.96 at 3.00 p.m. in the Central Jail premises. Three chances were given to the witnesses P.W.2 and Gangabhavani to identify A2 Raji @ Pukkaraj who correctly identified him in all the three chances. Ex.P11 is the record of the test identification parade containing 3 sheets. F G

The contention of the learned counsel for the appellant that the complaint has not been registered within the Police Station which has a jurisdiction. This contention also has no force. This point of jurisdiction was not urged before the Sessions Court and also before the High Court. H

A This was raised by the learned counsel for the appellant at the time of addressing the arguments before us. Hence, we decline to entertain this plea at this belated stage.

B We have carefully gone through the annexures, the evidence of P.W.2 who is an eye-witness. Her evidence is cogent and convincing. In her evidence she stated that the deceased Shanmugam has been living with one Sarasu for about 8 years prior to his death and six months prior to his death, they came and were living in a house nearby their house. About a week prior to that he was staying in their own house. About a week prior to the death of Shanmugam, Sarasu committed self-immolation by pouring kerosene on herself and died after four or five days. A1-Ravi, the brother of Sarasu and her mother, and brothers thought that Shanmugam was responsible for the death of Sarasu and beat him. Deceased Shanmugam told them that he fears danger to his life and wanted to stay in their house for safety purpose. They also consented for that. On 6.3.96 at 12.30 p.m. D Shanmugam was lying in the room of her house while PW-2, her husband Adimoolam and daughter Gangabhavani were having food and at that time, A1-Ravi along with six persons armed with knife and sticks entered into their house and went inside the room where Shanmugam was lying and attacked him. A1 Ravi assaulted Shanmugam with knife and a person with black complexion beat Shanmugam with a stick. Unable to bear the E beatings Shanmugam climbed down the staircase and started running and the seven persons chased him. When she came out she found that all the seven persons forcibly took Shanmugam in an autorickshaw. She told this fact to P.W.1 at 1.30 p.m. when he came to her house. P.W.1 and her other son Krishnamurthy went in search of Shanmugam and at 4.30 p.m. P.W.1 F came to her and informed her that Shanmugam had sustained injuries and was lying near Boomianpet and that they admitted him in hospital. Subsequently, her son Shanmugam died. She has stated that she identified the second accused before Magistrate in the jail as the person with black complexion who beat her son apart from A1.

G PW7 Dr. R. Balaraman who conducted the post mortem examination on the dead body and on external examination found seven injuries and on internal examination, there was sub-dural haemorrhage over left cerebral hemisphere. Brain was odomatous. Extensive contusion was seen over the left side of neck at the level of hyoid bone. Viscera was sent for H chemical analysis and it was free from poison. He gave his final opinion

on 30.12.1996 that the deceased Shanmugam died of injuries on head and neck. Ex. P7 is the post mortem examination report and Ex. P8 is the chemical examiner's report. Ex. P9 is the final opinion. All the injuries in Ex. P7 were ante-mortem in nature. Injuries 1 and 2 with the corresponding internal injuries are fatal in nature, sufficient to cause death in the ordinary course of nature. He has opined that injuries 1, 3 to 6 are possible with No. 1 while injury No. 2 is possible with No. 2 Injury No. 7 can be a burn injury or may be due to some other reason. A B

PW10, Vijayasundaram, the Inspector of Police has stated that he recovered the weapon under a cover of the mahazar Ex.P5 and then proceeded to the house of A1 who identified and produced the Koduval Kathi (Knife) M.O.2 and a full hand shirt M.O.3 which were recovered under cover of mahazar Ex.P6. M.O. 1 to 3 contained blood stains. P.W.11, the Inspector of Police who took further investigation from PW10 obtained the opinion from P.W.7 Dr. Balaraman and examined him and also obtained a copy of the F.I.R. of D. Nagar Police Station pertaining to the death of Sarasu, wife of deceased Shanmugam who had succumbed to burn injuries, despite treatment given to her in the Government Hospital, Pondicherry. He further stated that he completed the investigation and laid the charge-sheet against all the accused under various sections. C D

For the foregoing reasons, we are of the opinion that the prosecution has established its case that A-1 has caused the death of the deceased and the evidences of P.W.2, P.W.3 and P.W. 6 which are important which clearly implicate the accused which caused the injury to the deceased. It is an admitted fact that the accused A-1 had been living with the deceased as his wife PW2 the mother of the deceased Shanmugam knows A-1 Ravi. She has in categorical terms stated that on the date of the incident A-1 came along with 6 persons and entered her house and attacked Shanmugam who was lying inside a room. She clearly identified A-1 as the person who was having the knife and assaulted the deceased. She does not know A2. She has also identified the accused at the identification parade. E F

For the reasons aforesaid, we hold that the prosecution has clearly established the guilt of the accused-appellant beyond any reasonable doubt and that the appeals filed by A-1, therefore, fail and are dismissed. G

S.K.S.

Appeals dismissed.