

SONELAL

v.

STATE OF M.P.

(Criminal Appeal No. 1133 of 2008)

JULY 22, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Criminal Trial:

Penal Code, 1860:S.302:

Murder – Trust worthiness of evidence of relatives of deceased, eye-witnesses – Accused gave knife blow to deceased thrice in his stomach and chest in the presence of his wife and son – Wife of the deceased took him to Police Station and lodged an F.I.R. – Deceased succumbed to the injuries in a Government hospital – Investigation – Charge Sheet – Relying on evidence of wife and son of the deceased, trial Court found accused guilty of committing murder and sentenced him to undergo life imprisonment – Affirmed by High Court – Correctness of – Held: Correct – Merely because eyewitness are family members, their evidence cannot per se be discarded as relationship is not a factor to affect credibility of a witness – Foundation has to be laid if plea of false implication is made – When an incident happens in dwelling house, inmates would be the most natural witness and should not be ignored – Moreover, insistence on witness having no relation with the victims often results in criminal justice going away – Merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witness – In the instant case Courts below analysed the evidence of wife and son of deceased which corroborate with the medical evidence, hence reliable – Natural witnesses.

According to the prosecution, on the fateful day,

A there arose dispute between the accused and the de-
ceased. The accused, with an intention to kill the de-
ceased, gave knife blow to deceased thrice in his stom-
ach, as a result of which his intestine came out. Wife of
B the deceased and his son had taken him to the police sta-
tion. He was sent to a Government hospital by the police
where he succumbed to the injuries. The dead body of
the deceased was sent for post mortem and accused was
C arrested by the Police. After completion of the investiga-
tion, charge-sheet was filed by the Police. Trial Court found
the evidence of P.W.6, son of the deceased and P.W.9, wife
of the deceased trustworthy and convicted the accused
for the offence of murder of the deceased and sentenced
him to undergo life imprisonment. Appeal filed there-
against by the accused was dismissed by the High Court.
D Hence, the present appeal.

Accused-appellant contended that when persons
who can be treated as independent witnesses have not
supported the prosecution version, the evidence of PWs
6 and 9 should not have been relied upon.

E Dismissing the appeal, the Court

F HELD: 1.1 Merely because the eye-witnesses are
family members their evidence cannot per se be dis-
carded. When there is allegation of interestedness, the
same has to be established. (Para – 6) [81-F]

G 1.2 Relationship is not a factor to affect credibility of a
witness. It is more often than not that a relation would not
conceal actual culprit and make allegations against an in-
nocent person. Foundation has to be laid if plea of false im-
plication is made. In such cases, the court has to adopt a
careful approach and analyse evidence to find out whether
it is cogent and credible. (Para – 6) [81-H; 82-A & B]

H *Dalip Singh and Ors. vs. The State of Punjab AIR (1953)*
SC 364; *Guli Chand and Ors. vs. State of Rajasthan (1974) 3*

SCC 698 and *Vadivelu Thevar vs. State of Madras* AIR (1957) SC 614 – relied on.

1.3 The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. (Para – 9) [82-G]

***Dalip Singh and Ors. vs. The State of Punjab* AIR (1953) SC 364; *Masalti and Ors. vs. State of U.P.* AIR (1965) SC 202; *State of Punjab vs. Jagir Singh* AIR (1973) SC 2407; *Lehna vs. State of Haryana* (2002) 3 SCC 76; *Gangadhar Behera and Ors. vs. State of Orissa* (2002) 8 SCC 381; *Babulal Bhagwan Khandare and Anr. vs. State of Maharashtra* (2005) 10 SCC 404 and *Salim Saheb vs. State of M.P.* (2007) 1 SCC 699 – relied on.**

1.4 The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. (Para – 13) [84-A & B]

1.5 Merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighborhood may be replete with other residents also. (Para – 13) [84-C & D]

***State of Rajasthan vs. Teja Ram and Ors.* AIR (1999) SC 1776 – relied on.**

2.1 In the instant case, the evidence of PWs 6 and 9 has been analysed in great detail by the trial Court and the High Court. The trial Court with reference to the evidence of PWs 6 and 9 noted that their version fits in within the medical evidence. (Para – 14) [84-E]

A 2.2 It appears from the report of the Forensic Science Laboratory that blood found on the knife seized from the accused matched with the blood found on the underwear of the deceased. PW-6 in his evidence stated that he had sustained injuries at the hands of the accused. The inevitable conclusion is that there is no merit in the appeal.
 B (Para – 15) [84-E & F]

Case Law Reference

(1953) SC 364; Relied on Para 7 & 8
 C (1974) 3 SCC 698;
 AIR (1957) SC 614
 AIR (1953) SC 364; Relied on 7, 10,11 & 12
 D AIR (1965) SC 202;
 AIR (1973) SC 2407;
 (2002) 3 SCC 76;
 (2002) 8 SCC 381;
 E (2005) 10 SCC 404;
 (2007) 1 SCC 699
 AIR (1999) SC 1776 Relied on 13
 F CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
 No. 1133 of 2008
 From the final Judgment and order dated 20.9.2006 of
 the High Court of Madhya Pradesh at Jabalpur in Crl. Appeal
 No. 1333 of 1999
 G Vidya Dhar Gaur, (SCLSC) for the Appellant.
 Vibha Datta Makhija for the Respondent.
 The Judgment of the Court was delivered by
 H Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Jabalpur Bench, dismissing of the appeal filed by the appellant questioning his conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') as was recorded by learned Additional Sessions Judge, Murwara, Katni.

3. Prosecution version as unfolded during trial in a nutshell is as follows:

On 24.12.1997 at about 3.30 P.M. Ram Khilawan (hereinafter referred to as the 'deceased') resident of Khirhani Gate, Katni went to the Hotel of Vijay after coming out of his house for having tea. There some dispute arose between accused Sone Lal and Ram Khilawan the deceased. Accused Sone Lal told him taking out a knife from his pocket, "I will finish you today". Sone Lal gave knife blow to deceased Ram Khilawan thrice in his stomach with an intention to kill him, whereby intestine came out of his stomach. The above said incident was witnessed by Sukh Ram Choudhary, Vijay Choudhary, Lala Choudhary and many others. Yashoda Bai W/o Ram Khilawan arrived there hearing the news of altercation. Accused-Sone Lal fled away from there towards Railway Lines after stabbing Ram Khilawan. Yashoda Bai had brought her husband Ram Khilawan to Police Thana carrying him on Rickshaw and had lodged FIR, Exhibit P-17 regarding the incident. P.S. Katni had sent Ram Khilawan to Government Hospital, Katni vide Exh.-P-21 for medical treatment. Dr. Arvind Chauhadda, Assistant Surgeon, had examined him vide his Report, Exh.-P-20. He had found injuries on his person. Injuries had been inflicted on Ram Khilawan's stomach and chest by sharp edged weapon. After an hour, Ram Khilawan succumbed to his injuries in the Government Hospital, Katni itself. Kamal Ram, Ward boy of Government Hospital had given death information of Ram Khilawan, vide Exh.-P15 to P.S.-Katni. P.S.-Katni entered this information as Merg Information, Exh.-P-16. ASI B.K. Mishra had prepared Panchnama of dead body of Ram Khilawan, Exh.-P-13 before the witnesses.

Assistant Civil Surgeon, Dr. S.K. Sharma (PW-15) accord-

A ing to Post mortem Report, Exh-P-25 found several injuries on the person of deceased Ram Khilawan i.e. towards left side of Chest, towards right side of chest, towards left side of Epigastric Region and. towards left side of stomach. These injuries had been inflicted by sharp edged weapon. Membrane of stomach, extruding outside, were visible. Right and left Pleural Cavity were ruptured. Peritoneum Cavity of the stomach and duodenum were ruptured. Small intestine was also ruptured. Death of Ram Khilawan was caused due to haemorrhage.

C In course of investigation of the case, Sri R. K. Gupta, SI seized blood stained as well as plain earth from the place of occurrence vide Seizure Memo. Exh.-P-19 and prepared Site Plan, Exh.-P-18. Smt. Yashoda Bai had deposited blood stained shirt of her husband, deceased Ram Khilawan with Sri R.K. Gupta, SI and the same was seized vide Exh.P-22. Bharat La1 D Constable deposited the sealed packet of Ram Khilawan's underwear at P.S. Katni receiving it back from Katni Hospital, which was seized by Exh. P-4. On 25th December, 1997 accused Sone Lal gave his statement in Police Custody vide Information memo Exh. P-8 that he has kept knife hidden in the E bush adjacent to Tamarind Tree opposite to pond located opposite the Excise Ware House and he can give the recovery of the same. Thus, accused Sone Lal handed over the knife taking out of the bushes and the same was seized vide Exh.-P-9. One blue coloured shirt worn from the person of accused Sone F Lal was seized vide Seizure Memo. Exh.-P-16. Seized articles were sent to FSL, Sagar for chemical Examination. Report of FSL, Sagar, Exh.-P-23 was received. As per FSL Report, blood was found on the knife, shirt and underwear seized from accused Sone Lal. Blood was also found on the shirt and under- G wear of deceased Ram Khilawan. Even blood was found in the earth being collected from the site.

After completion of investigation, Charge Sheet was produced by the Police, Katni in the Court for hearing the charges against the accused.

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Since accused abjured guilt trial was held.

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The trial Court primarily relied on the evidence of Krishna Kumar (PW-6) the son of the deceased and Yashoda Bai (PW-9) the wife of the deceased. With reference to the evidence of PW-9 it was held that the same was trustworthy and inspired confidence. Accordingly, the appellant was found guilty and sentenced to imprisonment for life.

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In appeal, the conviction was questioned primarily on the ground that the evidence of PWs 6 and 9 should not have been relied upon. The High Court found that the report of the incident was lodged immediately by PW-9 which was recorded as Ext.P-17. It was pointed out that four others who were named as alleged eye-witnesses did not support the prosecution version. The High Court found that the doctor indicated about the location of the injuries and the medical evidence affirmed the fact that the deceased had been stabbed several times and the blood was found on the clothes of the deceased as well as on the knife seized from the accused. The knife was recovered on the basis of disclosure statement made by the accused. Accordingly, it dismissed the appeal.

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4. In support of the appeal, learned counsel for the appellant submitted that when persons who can be treated as independent witnesses have not supported the prosecution version the evidence of PWs 6 and 9 should not have been relied upon.

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5. Learned counsel for the State on the other hand supported the judgment and order of the courts below.

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6. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a

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A factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In *Dalip Singh and Ors. v. The State of Punjab* (AIR 1953 SC 364) it has been laid down as under:-

C "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in *Guli Chand and Ors. v. State of Rajasthan* (1974 (3) SCC 698) in which *Vadivelu Thevar v. State of Madras* (AIR 1957 SC 614) was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh's* case (supra) in which surprise was expressed over the impression

which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

“We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – *Rameshwar v. State of Rajasthan*’ (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.”

10. Again in *Masalti and Ors. v. State of U.P.* (AIR 1965 SC 202) this Court observed: (p. 209-210 para 14):

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

11. To the same effect is the decisions in *State of Punjab v. Jagir Singh* (AIR 1973 SC 2407), *Lehna v. State of Haryana* (2002 (3) SCC 76) and *Gangadhar Behera and Ors. v. State of Orissa* (2002 (8) SCC 381).

12. The above position was also highlighted in *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra* [2005(10)

A SCC 404] and in *Salim Saheb v. State of M.P.* (2007(1) SCC 699).

B 13. The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighborhood may be replete with other residents also. [See: *State of Rajasthan v. Teja Ram and Ors.* (AIR 1999 SC 1776)].

E 14. In the instant case, the evidence of PWs 6 and 9 has been analysed in great detail by the trial Court and the High Court. The trial Court with reference to the evidence of PWs 6 and 9 noted that their version fits in within the medical evidence.

F 15. It appears from the report of the Forensic Science Laboratory that blood found on the knife seized from the accused matched with the blood found on the underwear of the deceased. PW-6 in his evidence stated that he had sustained injuries at the hands of the accused. The inevitable conclusion is that there is no merit in this appeal which is accordingly dismissed.

S.K.S.

Appeal dismissed.