

DINESH KUMAR  
v.  
STATE OF RAJASTHAN  
(Criminal Appeal No. 1215 of 2008)

AUGUST 4, 2008

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

*Penal Code, 1860:*

*ss. 302, 307, 324, 148, 452, 323 r/w s.149 – Conviction of accused-appellant affirmed by High Court while acquitting four others – HELD: Even if acquittal is recorded in respect of co-accused, conviction can be recorded in respect of another accused if evidence against him is found cogent, credible and truthful – Conviction upheld – Evidence.*

*Evidence:*

*Testimony of related witnesses – HELD: Mere fact that witnesses were related to deceased cannot be a ground to discard their evidence if the same is found to be clear, cogent and credible – On facts, High Court analysed the testimony of injured and other eye witnesses and found the same as cogent and credible – Penal Code, 1860 – ss. 302, 307, 324, 148, 452, 323 r/w s.149.*

**The appellant along with four others was prosecuted for commission of offences punishable under ss. 302,307,324,148, 452,323 r/w s.149 IPC. The prosecution case was that there was long standing enmity between the accused party and the complainants. In the night of occurrence the accused party armed with deadly weapons entered the house of the victims at about 11.00 P.M. and attacked them. The accused appellant pierced his sword in the abdomen of one of the victims who succumbed to his injuries in the hospital. The other accused**

A also were stated to have caused severe injuries to the victims. The trial court convicted all the five accused of the offences charged. The High Court acquitted four of the accused but dismissed the appeal as regards the appellant.

B In the instant appeal filed by the convict, it was contended for the appellant that since four persons were acquitted by the High Court, it should not have maintained his conviction more particularly when the witnesses were related.

C Dismissing the appeal, the Court

HELD: 1. Law is fairly well settled that even if acquittal is recorded in respect of co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. [para 6] [847-G]

E 2.1 The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. In law testimony of an injured witness is given importance. In the instant case, PWs 7 and 13 were the injured witnesses and PW-10 was another eye-witness and was the informant. When the eye-witnesses are stated to be interested and inimically deposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically deposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witness appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence. [para 6] [847-H 848 A,B,C]

H

2.3 In the instant case, the Trial Court and the High Court have analysed the testimony of PWs 7, 10 and 13 in great detail. It is revealed that the appellant had inflicted the first sword blow to the deceased in his abdomen and he fell on the ground. The sword used in the offence was recovered at the instance of the appellant and the same was found to be stained with same group of human blood, as that of the deceased. The High Court, however, found that the role ascribed to the others was not fully satisfied. In this view of the matter, there is no merit in the appeal. [para 6] [848 C,D,E,D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1215 of 2008

From the final Judgment and Order dated 14.5.2007 of the High Court of Rajasthan, Jaipur Bench at Jaipur in D.B. CrI. Appeal No. 176 of 2002

Vijay Singh Charak (A.C.) for the Appellant.

Aruneshwar Gupta, Naveen Kumar Singh and Shashwat Gupta for the Respondent.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Heard learned counsel for the parties.

2. Leave granted.

3. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jaipur Bench, upholding conviction recorded by learned Additional Sessions Judge No.2, Fast Track Court, for offences punishable under Sections 302, 307, 324, 148, 452 and Section 323 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). In all, five persons faced trial. The appeal filed by four others was allowed and conviction in respect of each one of them was set aside. They were convicted in terms of Section 302 read with 149 IPC, 307 read with 149, 324/149, 148/452 and 323 IPC. The appel-

A lant was sentenced to imprisonment for life and to pay a fine with default stipulations and to suffer 10 years, 1 year, 2 years and 6 months imprisonment in respect of other offences.

4. Background facts giving rise to the trial are as follows:

B Informant-Suresh Kumar (PW-10) submitted a written report (Ex.P-5) at Police Station Mahaveer Nagar, Kota, on 8.4.2001 at about 3.00 a.m. stating that his house is situated at Keshave Nagar, Kota, and Babu Lal Nai was also residing in front of his house. There had been long standing enmity between them and many a times they had altercations in the past.

C On 7.4.2001 at about 11 O'clock, while the informant and his family members were sleeping in the house after bolting the door from inside, the accused Babu Lal Nai along with his wife Smt. Geeta, and sons Dinesh, Sattu @ Satyanarayan and Sonu @ Sunil and Smt. Nirmla W/o Shri Dinesh armed with deadly weapons entered into his house. Chittar Lal, father of the informant (hereinafter referred to as the 'deceased') enquired from the accused as to why they had entered into the house. On this, Babu Lal Nai and his wife Smt. Geeta exhorted the accused to finish them. Dinesh with the sword which he was carrying pierced abdomen of Chittar Lal. Babu Lal Nai inflicted injury on the abdomen of Chittar Lal. Uma Shanker and the informant Suresh Kumar rushed to rescue Chittar Lal. Satyanarayan inflicted blow with an iron rod on the head of Chittar Lal. Dinesh and Satyanarayan inflicted knife injury to Uma Shankar and Vinod;

F while Nirmla W/o Dinesh and Smt. Geeta W/o Babu Lal and Sonu @ Sunil inflicted injuries to his father and brother with lathies and iron rod. Chittar Lal and Uma Shankar became unconscious on the spot. On hearing hue and cry, neighbours also gathered there. Injured Uma Shankar and Chittar Lal were taken to the hospital. Chittar Lal succumbed to the injuries while injured Uma Shankar was admitted to the hospital. On the basis of the aforesaid report, a case under Section 147, 148, 149, 302, 307, 452 and 323 IPC was registered and investigation commenced. After investigation, charge sheet was filed. In due

H course, the case came up for trial before the learned Additional

Sessions Judge No.2 (Fast Tract), Kota. Charges under Sections 148, 452, 302 or 302/149, 307 or 307/149, 324 or 324/149 and 323 or 323/149 IPC were framed against the appellant and other co-accused who denied the charges and claimed trial. The prosecution in support of its case examined 18 witnesses. In their explanation under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') the appellant and other co-accused claimed innocence. Appellant-Dinesh got himself examined as DW-1 under Section 315 Cr.P.C. Before the Trial Court, the primary stand was that there was long standing enmity between the parties and, therefore, there was false implication. It was also submitted that appellant was, in fact, assaulted by the complainant party had also suffered injuries and had lodged a cross case.

Learned Trial Judge on hearing final submissions convicted and sentenced the appellants as indicated hereinabove.

In appeal, the stand was reiterated. The High Court found that though there was some amount of exaggerations so far as the others are concerned, the evidence of the eye-witnesses PWs 7, 10 and 13 was credible and cogent and, therefore, dismissed the appeal so far as the appellant is concerned.

5. In support of the appeal, learned counsel for the appellant submitted that when four persons have been acquitted by the High Court, the conviction of the appellant should not have been maintained, more particularly, when they are related. Learned counsel for the respondent-State, on the other hand, supported the judgment of the High Court.

6. It is to be noted that PWs 7 and 13 were the injured witnesses and PW-10 was another eye-witness and was the informant. Law is fairly well settled that even if acquittal is recorded in respect of co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard

A their evidence. In law testimony of an injured witness is given importance. When the eye-witnesses are stated to be interested and inimically deposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise  
B of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically deposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witness appears to be clear,  
C cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence. In the instant case, the Trial Court and the High Court have analysed the testimony of PWs 7, 10 and 13 in great detail. It is revealed that the appellant had inflicted the first sword blow to the deceased in his abdomen and he fell on the ground. The High  
D Court, however, found that the role ascribed to the others was not fully satisfied. The sword used in the offence was recovered at the instance of the appellant and the same was found to be stained with same group of human blood, as that of the deceased, as per the FSL report, Exh.P-28. PW-7 stated that when  
E he tried to save his father, the deceased also inflicted blows on him and he sustained injury by sharp edged weapon i.e. the sword. According to him, the accused inflicted the blow by the sword on his neck and he fell down. Though, the appellant stated that he had suffered injuries at the hands of the deceased and  
F his sons, as rightly noted by the Trial Court and the High Court, they were superficial injuries and as the doctor opined, could be self inflicted.

G 7. Above being the position, we find no merit in this appeal, which is, accordingly dismissed.

R.P.

Appeal dismissed.