

THUKARAM AND ORS.

v.

STATE OF KARNATAKA

(Criminal Appeal No. 482 of 2008)

MARCH 13, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – s.304 (II):

Conviction under – Based on evidence of related witnesses – Justification – Held: Relationship is not a factor to affect credibility of a witness – Foundation has to be laid if plea of false implication is made – In such cases, the Court has to adopt a careful approach – Evidence – Related witness – Appreciation of.

The conviction of Appellant No.1 by Courts below, under s.304(II), IPC, was challenged before this Court on the ground that the same was based on the evidence of related witnesses, viz. PWs 1,2 and 5.

Dismissing the appeal, the Court

HELD: 1.1. The stand that PWs 1, 2 and 5 were related to the deceased is really of no consequence. 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 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. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. [Paras 7, 8, 11] [39-D, E; 40-C]

1.2. In the instant case, in any case PWs. 6 & 10 were

A independent witnesses and it has not been shown as to why they would depose falsely against the appellants. The evidence on record clearly establishes that the appellants have been rightly held guilty. [Para 15] [41-D, E]

B *Dalip Singh and Ors. v. The State of Punjab* AIR (1953) SC 364; *Guli Chand and Ors. v. State of Rajasthan* (1974) 3 SCC 698; *Vadivelu Thevar v. State of Madras* AIR (1957) SC 614; *Masalti and Ors. v. State of U.P.* AIR (1965) SC 202; *State of Punjab v. Jagir Singh* AIR 1973 SC 2407; *Lehna v. State of Haryana* (2002) 3 SCC 76; *Gangadhar Behera and Ors. v. State of Orissa* (2002) 8 SCC 381; *Babulal Bhagwan Khandare and Anr. V. State of Maharashtra* (2005) 10 SCC 404 and *Salim Saheb v. State of M.P.* (2007) 1 SCC 699 – relied on.

D CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 482 of 2008.

From the final Judgment and Order dated 03.01.2007 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 428 of 2001.

E Shankar Divate for the Appellants.

Anitha Shenoy for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

F 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court upholding the conviction of the appellant for offence punishable under Section 304(II) of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for five years was imposed. The
G appellants preferred an appeal before the Karnataka High Court.

3. As noted above, the learned Single Judge of the High Court upheld the conviction, but reduced the sentence.

H 4. In support of the appeal, learned counsel for the appellants submitted that originally there were six accused

persons. A3 was acquitted by the trial court whereas appellant Tukaram was found guilty of offence punishable under Section 304 (II). However the sentence of seven years as was imposed by the trial court was reduced to five years. A

5. It was further submitted that evidence of PWs 1,2 & 5 should not have been accepted as they were related to the deceased. B

6. Learned counsel for the respondent-State on the other hand submitted that there is no legal bar in accepting the evidence of a relative. A relative would normally not protect person who is guilty and would shield the actual assailant. C

7. So far as the appellant is concerned, the trial court and the High Court have analysed the evidence in great detail and have concluded that the appellant was the author of the crime. Stand that PWs. 1,2 & 5 were related to the deceased is really of no consequence. D

8. 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 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. E

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

"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 G H

A 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
B 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.”

10. The above decision has since been followed in *Guli
C 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.

11. We may also observe that the ground that the witness
being a close relative and consequently being a partisan
D 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
E 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
F 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
G 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.”

12. Again in *Masalti and Ors. v. State of U.P.* (AIR 1965
H 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.”

A
B

13. To the same effect is the decision 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).

C

14. The above position was highlighted in *Babulal Bhagwan Khandare and Anr. V. State of Maharashtra* [2005(10) SCC 404] and in *Salim Saheb v. State of M.P.* (2007(1) SCC 699).

D

15. In any case PWs. 6 & 10 were independent witnesses and it has not been shown as to why they would depose falsely against the appellants. The evidence on record clearly establishes that the appellants have been rightly held guilty.

E

16. The appeal is dismissed.

B.B.B.

Appeal dismissed.

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