

CASE NO.:
Appeal (crl.) 462 of 2007

PETITIONER:
Mano

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 02/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Crl.) No.5227 of 2006)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Madras High Court dismissing the appeal filed by the present appellant and two others. By the impugned judgment the conviction of the appellant and the two others for commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') is maintained. The Trial Court convicted the appellant and the three others and sentenced each to undergo imprisonment for life and to pay a fine of Rs.4,000/- with default stipulation. Only three of them had preferred appeal before the High Court.

Prosecution version as unfolded during trial is as follows:

For the sake of convenience, the accused persons-appellants are described as A1, A2 and A3. The other accused is described as A4.

Sivaraman (A1) is a resident of Periyairusampalayam village. Mano (A2) and Nagappan (A3) are residents of Ariyankuppam village. Sivaraman (PW-1) and Ganpathy (PW-3) are brothers and they are also residents of Periyairusampalayam. There was quarrel between A1 and PW-1 at the time of festival at Angalamman temple in Periyairusampalayam village. The said quarrel was pacified by one Pasupathy (hereinafter referred to as the 'deceased'), son of another brother of PWs 1 and 3 and thereby A1 had impression that the deceased was a supporter of Srinivasan. Due to that impression, there was enmity between A1 and the deceased. On 8.5.2000, at about 8.30 p.m., PW-1, PW-3, Vijayan, Murugan, Babu and Veerappan were engaged in conversation near the electric post on the way to graveyard. At that time, the deceased was coming towards the way of graveyard for the purpose of attending nature's calls. PW-1 was also following him. At that time, suddenly A1 armed with knife, A2 armed with knife and A3 and A-4 armed with a big stick and iron pipe respectively came from behind a thorny bush and began to attack the deceased. Particularly A1 and A2 attacked the deceased with knives on his neck and A3

attacked the deceased, with the big stick. Consequently, the deceased sustained injuries and fell down. On seeing it, PW-1 and others rushed near and the accused persons ran away from the occurrence place. The injured deceased was taken to the hospital at Pondicherry, but on the way, he died. Thereafter, PW-1 gave complaint marked as Ex.P1 to the Sub Inspector of police viz., Balakrishnan (PW-12) at about 5.00 a.m. on 9.5.2000. On the basis of Ex.P1, PW-12 registered a case in Crime no.132 of 2000 under Section 302 IPC and prepared the printed FIR marked as Ex. P15 and sent the same to the Magistrate and copies to the higher officials. Subsequently, the Inspector of police viz., Sundarrajan, (PW-13) received the said FIR at about 5.30 a.m. on 9.5.2000 and took up the investigation and proceeded to Periyairusampalayam village and visited the occurrence place in the presence of Gopu (PW-7) and Palani (PW-8), prepared observation mahazar and also recovered from the occurrence place M.Os. 1 to 8 by preparing mahzar marked as Ex.P18 and sent those M.Os. to the Magistrate. In continuation of the investigation, he proceeded to the Pondicherry Government Hospital and conducted inquest upon the dead body of Pasupathy in the presence of panchayatdars and witnesses and prepared inquest report marked as Ex. P 19 and also examined witnesses and then made arrangements for sending the body for post mortem through Head Constable Thukkaram with the requisition letter marked as Ex. P 20 and he searched for the accused persons. In the meanwhile, Dr. Balaraman (PW-10) conducted post mortem and found the following five external injuries.

- "1. Bluish discolouration and swelling present over right upper eye lid.
2. Lacerated injury 4 x 1 x bond deep present over left Parietal region of head with fracture of underlying bone.
3. Lacerated injury 5 x 1 x bone deep over left occipital region of head.
4. Lacerated injury 4 x 1 x bone deep present over left occipital region of head.
5. Obliquely placed incised wound 10 x 1.5 x bone deep with fracture of underlying bone present over back of neck behind left ear."

Besides, there were internal injuries. He furnished post mortem report marked as Ex. P10 along with his opinion that the said Pasupathy had died due to head injuries sustained by him. The Inspector of police arrested all the four accused on 15.5.2000 at about 3.30 p.m. at Thavalakuppam road junction and recorded the confessional statement of A1 marked as Ex.P21 and that of A2 marked as Ex. P 22 and recovered the knives marked as M.O.9 and M.O. 10 by preparing mahazars marked as Exs. P 23 and P 24 and examined Dr. Balaraman showing M.Os. 9 and 10 and then remanded the accused for judicial custody and also gave requisition of the Magistrate for sending the M.Os. for chemical analysis. After receipt of chemical analyst's report, finally, he completed the investigation and filed charge sheet against all the accused for commission of offence punishable under Section 302 read with Section 34 IPC.

The Trial Court on analysis of the evidence came to hold that the appellant and the three others were guilty of offence and sentenced each, as noted above. There were initially four accused persons. Only three of them i.e. A1, A2 and A3 filed appeal before the High Court which was dismissed by the

impugned judgment. The present appeal is by A2.

Learned counsel for the appellant submitted that the FIR which was treated to be information on the basis of which law was set into motion was not really first information report and there was another document anterior in point of time. The FIR which has been taken note of by the Trial Court was lodged on 5 p.m. on 9.5.2000 whereas the earlier information given by the Hospital on 8.5.2000 at 2.30 p.m. The two witnesses on whose evidence the Trial Court recorded the conviction i.e. PW 1 and PW 3 were related to the deceased. The version unfolded during trial is highly unbelievable. It was submitted that it is impossible that somebody would lie in hiding around 8.00 p.m. and would not attack in darkness and instead committed murder near a lamp post. PWs 2, 4 and 6 did not support the prosecution version. The weapons were recovered long after and were not sent for chemical examination. It is, therefore, submitted that the conviction as recorded by the Trial Court and maintained by the High Court cannot be maintained.

In response, learned counsel for the respondent-State supported the judgment of the High Court affirming that of the Trial Court.

It is to be noted that neither before the Trial Court nor before the High Court any plea was taken about their being earlier report regarding alleged incidence. Therefore, it is not possible to accept the stand as presently urged.

The other stand relates to the evidentiary value of statements of PWs 1 and 3 who were claimed to be related to the deceased.

In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a 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.

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

"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."

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.

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 \026 '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."

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."

To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76).

In S. Sudershan Reddy v. State of A.P. (AIR 2006 SC 2716), it was observed that 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.

Even if the recovery of the weapons as claimed was after a long period and those were not sent for forensic examination that does not in any way dilute the evidentiary value of the prosecution version.

Above being the position, there is no merit in this appeal, which is accordingly dismissed.

JUDIS