SUPREME COURT OF INDIA

Gali Venkataiah

Vs.

State of Andhra Pradesh

Crl.A.No.1533 of 2007

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

12.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Andhra Pradesh High Court upholding the conviction of appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life and fine of Rs.1,000/- with default stipulation in terms of the judgment of learned 4th Additional Sessions Judge, Nellore.

3. Background facts in a nutshell are as follows: One Gali Krishnaiah (hereinafter referred to as the 'deceased') Gali Seethaiah and the appellant are brothers and the relation between them was strained. Prior to the incident, the appellant threatened the deceased that he would kill him. While so, on 13.09.1999, at about 8.30 a.m. the appellant with an intent to kill the deceased, armed with a knife, went to him, pulled him and stabbed on his left side of the chest and caused vital stab injury, besides causing another cut injury over middle of the left forearm. The knife pierced into the chest of the deceased and struck. When the sons of the deceased raised hue and cry, the appellant left the spot leaving the knife there itself. On the way to the hospital, the deceased succumbed to the injuries sustained by him. Based on the complaint presented by the wife of the deceased (PW1), a case in Crime No. 161 of 1999 on the file of the II Town (L & O) P.S., Nellore was registered and the same was investigated into. After completion of investigation, charge sheet was filed. Accused denied the charges and claimed false implication. During trial, twelve witnesses were examined to further prosecution version. Placing reliance on the evidence of eye witnesses PWs 1 to 3, conviction as noted above, was recorded and sentence imposed.

4. Challenging correctness of the judgment rendered by the trial court an appeal was preferred before the High Court. The primary stand was that the witnesses PWs 1 to 3 were the wife and the sons of the deceased and were, therefore, interested witnesses. Further the other witnesses who were independent did not support the prosecution version. In any event it was submitted that an offence under Section 302 IPC is not made out.

5. The prosecution supported the judgment of the trial court. The High Court noticed that the evidence of PWs. 1 to 3 is clear, cogent and credible and therefore the conviction cannot be faulted. It was also noticed that the evidence of PW6 was to the effect that he found the appellant and the deceased struggling with each other and therefore it was of the view that the conviction as recorded by the trial court did not suffer from any infirmity.

6. In support of the appeal learned counsel for the appellant submitted that the evidence of PWs. 1 to 3 should not have been relied upon as they were related to the deceased. Further the evidence of PWs. 4 and 6 who did not support the prosecution version in its entirety should not have been acted upon. In any event, it was contented that the assault was made in course of sudden quarrel.

7. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. 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.

8. 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."

9. 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.

10. 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."

11. 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."

12. 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).

13. 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).

14. It appears from the evidence of the witnesses that the relationship between the appellant and the deceased was strained and much before the assault was made, there was exchange of hot words between the accused and the deceased and they were quarreling with each other.

15. For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

16. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without

premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

17. The above position is highlighted in Sandhya Jadhav v. State of Maharashtra,(2006) 4 SCC 653.

18. Considering the factual background we are of the view that the appropriate conviction would be in terms of Section 304 Part I IPC, custodial sentence of ten years would meet the ends of justice. The appeal is allowed to the aforesaid extent.