SUPREME COURT OF INDIA

Mohabbat

Vs.

State of M.P.

Crl.A.No…… of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

03.02.2009

JUDGMENT

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, Indore Bench, which by the impugned judgment disposed of three appeals filed by the accused persons who faced trial in Sessions Trial No.276/2000 before learned IInd Additional Sessions Judge, Dhar. Nine accused persons faced trial. They were charged for commission of offences punishable under Sections 147, 148 and Section 302 and in the alternative under Section 302 read with Section 149 of the *Indian Penal Code, 1860* (in short the `IPC'). The trial Court convicted each one of them under Section 302 read with Sections 149, 147 and 148 IPC and imposed sentences to life imprisonment and fine with default stipulation of one year and two years respectively.

3. Prosecution version in a nutshell is as follows:

> "On 02.09.2000, Yunus (hereinafter referred to as the `deceased') along with Jafar (PW-6) at about 2.30 p.m. left by bike for Ujjain. On the way near Kesur, one Kadar (PW-4) met them, and they had a talk with him. Since it was 4.00 p.m., Jafar (PW-6) and the deceased changed their mind and did not go to Ujjain and came back to Dhulana. On the way accused persons armed with swords were standing there. Seeing that the accused persons were standing the deceased left his bike and ran inside the house of Bagdiram (PW-5) to take shelter. However, the accused persons removed the tin ceiling of the house, entered it and struck sword blows on him. Yunus the deceased came out of the house, where accused again dealt sword blows on him. The accused ran away. Thereafter, Jafar (PW-6) reached the spot. Village Chowkidar Ranchhod (PW-7) also came there. The deceased had a talk with Chowkidar Ranchhod (PW-7). Yunus said that it was accused persons who caused injuries to him. By that time one Mehboob (PW3) of Babeda Village had come there. Jafar

requested him to intimate his relatives. He informed Dawood (PW8), Mubarak, Ayub (PW-9). At that time Yunus (the deceased) was alive who told them also that accused have caused these injuries. Thereafter, he was taken to hospital where Dr. P.C. Gupta (PW-11) examined him and found that he is dead. The matter was reported to police by intimation Ex.P/20. The Police Dhar registered Merg No.067/2000 under Section 174, of *Code of Criminal Procedure, 1973* (in short the `Code'). FIR was chalked out as Ex.P/57 and investigation was started by the Kanwan Police Station as the case was in its jurisdiction. After investigation, charge-sheet was filed.

After postmortem on the body of the deceased Yunus, Dr. Borasi (PW-10) found the cause of death as shock and hemorrhage from multiple injuries over the body especially wrist imputation and anckle joint injury. The deceased had 9 incised injuries on different parts of the body. Heart chamber was empty. The wrist of left hand was fractured and imputed, ulna, patella were fractured. Left tibia, flbula bones were fractured. Injuries were of grievous nature and were sufficient in the ordinary course of nature to cause death. Ex.P/18 is his postmortem report. According to him, the death was within 24 hours from the time of postmortem.

Since the accused persons pleaded innocence trial was held. PWs 3, 4, 5 and 7 who were projected as eye witnesses by the prosecution did not support the prosecution version and resiled from the statements made during investigation. However, PW-6 the brother of the deceased who was going alongwith the deceased re-iterated the statements made during investigation. Placing reliance on the evidence of PW-6, the trial Court found the accused persons guilty."

4. In appeal, stand was that when four of the so called eye witnesses did not support the prosecution version, merely only on the basis of evidence of PW-6, the brother of the deceased, conviction should not have been recorded. It has been vehemently urged by learned counsel for the appellants that PW-6 is the relative, so his version should not have been relied upon. Apart from that, it was submitted that before doctor PW-9 the deceased had made a dying declaration but had not implicated the accused persons. The High Court did not find any substance. Accordingly, the appeals filed by the nine appellants were dismissed.

5. The present appeal is by accused Nos.1, 6 and 7. It is submitted by learned counsel for the appellants that PW-6 had not implicated the appellants and he being the only witness on whose version the conviction was recorded the trial Court and the High Court should not have found them guilty.

6. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

7. 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 the 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*[1] 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*[2] in which *Vadivelu Thevar v. State of Madras*[3] 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*[4]. 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.*[5] 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 decisions in *State of Punjab v. Jagir Singh*[6], *Lehna v. State of Haryana*[7] *and Gangadhar Behera and Ors. v. State of Orissa*[8].

13. The above position was also highlighted in *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra*[9], *Salim Saheb v. State of M.P.*[10] and Sonelal v. State of M.P. (SLP (Crl.) No.3220 of 2007 disposed of on 22.7.2008).

14. It needs to be noted that PW-6 has referred to the incident in detail. According to him initially five persons had come running. He has specifically named the persons. He has further stated that the deceased being afraid jumped out of the motor cycle and ran away. The witness has further stated that the deceased ran for some distance and entered into the house of one Bagdiram and closed the door from inside. Thus at that time nine persons including the present appellants came running and they were armed. It has further been stated by him that the deceased opened the door and started running away and was attacked with sword. In the cross examination he had admitted that the deceased was attacked by Kamal, Ansar, Inayat and Mohabbat inside the house of Bagdiram. Though it was the stand of learned counsel for the State that in the dying declaration all the accused persons were named, it appears that PWs 6 and 7 did not state about the dying declaration vis-`-vis Israil and Iqbal. PWs 8 and 9 have also given different names. In view of the aforesaid, it cannot be said that the prosecution has established the accusations so far as accused Iqbal and Israil i.e. accused Nos. 7 and 6 are concerned. But the prosecution has clearly established the accusations so far as Mohabbat accused No.1 is concerned. The appeal filed by accused Mohabbat is dismissed while the appeal filed by Iqbal and Israil is allowed. They be set at liberty forthwith unless required to be in custody in any other case, if any.

15. The appeal is allowed to the aforesaid extent.

[1]*(AIR 1953 SC 364)*
[2]*(1974 (3) SCC 698)*
[3]*(AIR 1957 SC 614)*
[4]*(AIR 1952 SC 54 at p.59)*
[5]*(AIR 1965 SC 202)*
[6]*(AIR 1973 SC 2407)*
[7]*(2002 (3) SCC 76)*
[8]*(2002 (8) SCC 381)*
[9]*2005(10) SCC 404*
[10]*(2007(1) SCC 699)*