

# SUPREME COURT OF INDIA

Raju @ Balachandran

Vs.

State of T.N.

Crl.A.No.1614 of 2009

(Swatanter Kumar and Madan B.Lokur JJ.)

27.11.2012

## JUDGMENT

### MADAN B. LOKUR, J.

1. The issue before us is whether the Trial Court and the High Court were both right in believing the testimony of PW-5 Srinivasan, a related and interested witness, that his brother Veerappan and his mother Marudayi were murdered by the appellants. Whether such an issue is of such public importance that it requires a decision from this Court is moot. But, be that as it may, we find no reason to disbelieve the witness and agree with both the Courts that his evidence should be accepted.

2. Accordingly, we uphold the conviction and sentence of the appellants for having committed the murder of Veerappan and Marudayi. The facts:

3. Appellant No. 1 (Raju @ Balachandran) is the father of appellant No. 2 (Rajkumar) and of appellant No. 3 (Sekar).

4. The case of the prosecution was that there was some enmity between the appellants and Veerappan relating to a ritual called "Mandu Vettal" performed before worshipping God in their village. The enmity dated back to about 4 or 5 years prior to the incident that we are concerned with.

5. On 4th May 2003 at about 5.30 a.m. Veerappan had gone to the tea shop of PW-7 Kamaraj and was returning along with PW-1 Thangavel and PW-5 Srinivasan (brother of Veerappan) who were following him. As Veerappan approached his

house, the appellants stopped him in the middle of the road and attacked him. Raju dealt a sickle blow on his right leg below the knee. This was followed by sickle blows inflicted on his shoulder, neck and head by Raj Kumar and Sekar. Veerappan died instantaneously, his head having almost been severed from the body.

6. On hearing some shouting, Veerappan's mother Marudayi came out of her house. When she saw what was happening, she came to rescue Veerappan and confront the appellants. At that time, Raju dealt her blows with his sickle on her neck, shoulder and head. Marudayi succumbed to her injuries a short while later en route to the hospital, where she was being taken by PW- 5 Srinivasan.

7. A First Information Report (FIR) of the incident was lodged by PW-1 Thangavel and thereafter investigations were started by the police.

8. According to the prosecution PW-1 Thangavel and PW-5 Srinivasan were eye witnesses to the incident. Also, when the attack on Veerappan and Marudayi took place, PW-2 Smt. Thangammal (wife of Srinivasan), PW-3 Rajagopal and PW-4 Smt. T. Vasugi came out of their house and witnessed the incident.

9. The appellants fled away after attacking Veerappan and Marudayi. Later on they surrendered in the local Court. When the investigating officer came to know of this, he sought their custody by moving an application in the Court. He was granted custody of the appellants on 14th May 2003. According to the prosecution, their confessional statement led to the recovery of the sickles used in the attack on the deceased. The clothes worn by the appellants were also recovered.

10. On the conclusion of investigations, a challan was filed alleging that the appellants had murdered Veerappan and Marudayi. In Sessions Case No.76/2004 before the Additional District Sessions Judge (Fast Track Court), Tiruchirapally, the appellants pleaded not guilty and claimed trial. The prosecution examined seventeen witnesses while the defence examined two witnesses.

#### Decision of the Trial Court:

11. During the trial, PW-1 Thangavel, the author of the FIR, PW-3 Rajagopal and PW-4 Smt. Vasugi turned hostile. The Trial Judge was of the view that PW-2 Smt. Thangammal and PW-5 Srinivasan were eye witnesses and believed the testimony of PW-2 Smt. Thangammal (in part) and that of PW-5 Srinivasan (in full).

12. The Trial Judge held that PW-2 Smt. Thangammal generally stated that all the appellants caused injuries to the deceased without being specific. Consequently, her testimony relating to the sickle blows was not accepted.

13. As regards PW-5 Srinivasan, it was held that he was specific in saying that Raju injured Veerappan with a sickle on the right leg below the knee, while the other two appellants injured him on his shoulder and neck. The nature of injuries was confirmed by the doctor PW-8 Dr. Sumathi Paul Raj. The evidence on record showed that Veerappan's head was almost severed from his body and his death was instantaneous. The Trial Judge also accepted the evidence of PW-5 Srinivasan that Marudayi was grievously injured by Raju on the head, neck and shoulder. Again, the nature of injuries was confirmed by the doctor PW-8 Dr. Sumathi Paul Raj who stated that Marudayi died as a result of the injuries.

14. The Trial Judge rejected the contention that since PW-5 Srinivasan was the elder brother of Veerappan and son of Marudayi, his evidence was that of an interested witness and therefore should not be accepted. He also rejected the contention that since the evidence of PW-5 Srinivasan was not corroborated, his evidence should not be accepted.

15. PW-6 Marudai, father of Veerappan and husband of Marudayi testified to the enmity between the parties as a result of the ritual "Mandu Vettal".

16. PW-7 Kamaraj the owner of the tea shop visited by Veerappan also turned hostile. He denied that Veerappan was followed by PW-1 Thangavel and PW-5 Srinivasan, but he did not deny that Veerappan had visited his tea shop on the fateful morning.

17. The other witnesses examined by the prosecution were the doctors who conducted the post mortem, the officers who investigated the occurrence and some others whose testimony is not of much significance.

18. The Trial Judge rejected the testimony of the two defence witnesses as not credible. DW-1 Murugesan stated that the appellants had come to his house on 3rd May 2003 and had stayed with DW-2 Smt. S. Vasantha. However, this witness was not aware about when the appellants had come to his house and after they left for the house of DW-2 Smt. S. Vasantha when did they return.

19. DW-2 Smt. S. Vasantha was not believed since she stated that the appellants had gone to a temple festival in her village but there was nothing to support this statement.

20. Based principally on the evidence of PW-5 Srinivasan and the recoveries made, the Trial Court, by its judgment and order dated 26th November 2004 convicted Raju for offences punishable under Section 341 of the Indian Penal Code (for short 'IPC') and Section 326 of the IPC in respect of Veerappan and Section 302 of the IPC for the murder of Marudayi. Rajkumar and Sekar were convicted of offences punishable under Section 302 of the IPC read with Section 34 thereof for the murder of Veerappan. Decision of the High Court:

21. In Criminal Appeal No.4/2005 filed by the appellants before the Madras High Court it was contended that since PW-1 Thangavel, PW-3 Rajagopal and PW-4 Smt. Vasugi had turned hostile, there was no credible evidence against the appellants, more so, because the author of the FIR PW- 1 Thangavel had turned hostile. As such, the very basis of the case could not be relied upon.

22. It was further submitted that the Trial Court had not fully believed PW-2 Smt. Thangammal and the only witness who came out in support of the case of the prosecution was PW-5 Srinivasan. It was submitted that there were some discrepancies in his evidence and as per the FIR he was not present at the place of occurrence. Therefore, it was submitted, the evidence of PW-5 Srinivasan could not be relied upon.

23. On the credibility of PW-5 Srinivasan, it was contended that the medical evidence did not match with his oral evidence and it would be unsafe to rely on his oral description of the events. In addition, it was submitted that since PW-5 Srinivasan was a related and interested witness, his testimony should be closely scrutinized and on such close scrutiny it would turn out that he was not a reliable witness.

24. The High Court rejected all the contentions urged on behalf of the appellants. It was held that there was no doubt that Veerappan and Marudayi died as a result of homicidal violence. It was further held that on an examination of the evidence of PW-5 Srinivasan it could not be said that he was an unreliable witness. While there may have been some minor discrepancies in his description of the events, he was believed by the Trial Judge and there was no reason for the High Court to disbelieve him.

25. The High Court noted that on a reading of the FIR it was clear that PW-5 Srinivasan was present at the place of occurrence. In addition thereto, the FIR also mentioned that PW-1 Thangavel had asked PW-5 Srinivasan to take Marudayi to the hospital for treatment. Consequently, the presence of PW-5 Srinivasan at the place of occurrence could not be doubted.

26. The High Court also held that there was some enmity between the appellants and Veerappan and on an overview of the entire case, the conviction handed down by the Trial Court must be accepted.

27. Accordingly, the High Court, by its judgment and order dated 2nd August 2006 dismissed the appeal filed by the appellants. Discussion:

28. Before us, only two contentions were advanced by learned counsel for the appellants. Firstly, it was contended that since PW-5 Srinivasan was a related and interested witness, his evidence must be closely scrutinized, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed. Secondly, it was contended that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW-5 Srinivasan.

29. The first contention relates to the credibility of PW-5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW-5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

30. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan v. Kalki*, (1981) 2 SCC 752. It was held that:

31. In light of the Constitution Bench decision in *State of Bihar v. Basawan Singh*, AIR 1958 SC 500 the view that a “natural witness” or “the only possible eyewitness” cannot be an interested witness may not be, with respect, correct. In *Basawan Singh*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was “concerned in the success of the trap”. The Constitution Bench held: “The correct Rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if

they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.”

32. The wife of a deceased (as in Kalki), undoubtedly related to the victim, would be interested in seeing the accused person punished – in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in Kalki is too narrow and generalized and needs a rethink.

33. For the time being, we are concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

34. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

35. In *Dalip Singh v. State of Punjab*, 1954 SCR 145 this Court observed, without any generalization, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused – each case has to be considered on its own facts. This is what this Court had to say:

“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 relative 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 generalisation. 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.”

36. How the evidence of such a witness should be looked at was again considered in *Darya Singh v. State of Punjab*, (1964) 3 SCR 397. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the “enemy” of the victim. This is what this Court said:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it..... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in

appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.”

37. More recently, in *Waman v. State of Maharashtra*, (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon *Sarwan Singh v. State of Punjab*, (1976) 4 SCC 369, *Balraje v. State of Maharashtra*, (2010) 6 SCC 673, *Prahlad Patel v. State of Madhya Pradesh*, (2011) 4 SCC 262, *Israr v. State of Uttar Pradesh*, (2005) 9 SCC 616, *S. Sudershan Reddy v. State of Andhra Pradesh*, (2006) 10 SCC 163, *State of Uttar Pradesh v. Naresh*, (2011) 4 SCC 324, *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 and *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477 it was held:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* and pithily reiterated in *Sarwan Singh* in the following words: “The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.”

39. We have gone through the evidence of PW-5 Srinivasan by applying the discerning scrutiny standard and find it difficult to overturn the view expressed by both the Courts in their acceptance of his evidence. His description of the events is simple and straightforward and the cross- examination does not demolish his

version of the events. In fact, the cross-examination is directed more at proving that one Subramaniam may have been the assailant since Veerappan had an illicit relationship with Subramaniam's first wife Periammal. This was ruled out by PW-5 Srinivasan who did not want to shield the real assailant and put the blame for the occurrence on someone else.

40. As far as the second contention is concerned, it overlaps with the first. Both the Trial Court and the High Court have concurrently held that PW-5 Srinivasan was an eye witness to the murder of Veerappan and Marudayi. The conclusion arrived at by both the Courts has not been shown to be perverse in any manner whatsoever nor has it been shown deserving of reversal.

41. The presence of PW-5 Srinivasan at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 Thangavel and his testimony. Even though PW-1 Thangavel may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on Veerappan and Marudayi. That there was a homicidal attack on them is not in dispute. This is confirmed even by the witnesses who turned hostile. It is also not in dispute that Veerappan died on the spot and that Marudayi was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 Srinivasan took Marudayi to the hospital immediately after she was attacked is confirmed by PW-1 Thangavel. On the basis of these facts, which are evident from the record, there is no option but to accept the conclusion of both the Courts that PW-5 Srinivasan was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable but is supported in its essential details by the testimony of the other witnesses.

Conclusion:

42. We find the evidence of PW-5 Srinivasan credible notwithstanding that he was a related and interested witness. Accordingly, we uphold the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court.

43. The appeal is dismissed.