A STATE OF A.P.

v.

S. RAYAPPA AND ORS.

FEBRUARY 14, 2006

B [H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860—Sections 302 and 148:

C *Murder—Evidence of P.W.2—Discarded by High Court on ground that inquest report did not disclose his name as an eyewitness—Propriety of—Held: Improper—In view of direct evidence that P.W.2 was present at the incident spot at the time of inquest report—High Court failed to take note that in the FIR, the name of P.W.2 prominently figured as an eyewitness.*

D *Murder—Delayed reaching of FIR before Ilaqa Magistrate—High Court doubted presence of eye-witnesses on that ground—Propriety of—Held: Not proper since evidence of eye-witness categorical with regard to participation of each accused—Also no question or suggestion was put to the Investigating Officer to explain the delayed reaching of FIR before the Magistrate.*

E *Criminal Trial:*

Murder—Related witness—Evidence of—Admissibility—Held: A related witness is not necessarily an interested witness—No reason for such witness to depose falsely against somebody—But testimony of a related witness should be examined cautiously—High Court erred in acquitting the accused on ground F *that eye-witnesses were related to the deceased—Penal Code, 1860—Sections 302 and 148.*

Murder—Independent witness—Non-examination of—Held: No ground to discard creditworthy and confidence inspiring testimony of related eye G *witnesses when tension and fear psychosis prevailed amongst public due to double murder in the town in a single day—In such situation, any independent witness not expected to come and depose about the incident even though he may have seen it—Penal Code, 1860—Sections 302 and 148.*

Murder—Discrepancy in statement of prosecution witness—Effect of—

H

Held: Every discrepancy is not fatal to the prosecution's case—Discrepancy which does not materially affect the prosecution case does not create any infirmities.

According to the prosecution, Respondents attacked the brother of PW1 with various deadly weapons and caused his death. Trial Court convicted the Respondents based on testimony of the two eye-witnesses, PW1 and PW2. PW2 is brother-in-law of the deceased.

High Court, however, acquitted the Respondents by discarding the testimony of PW1 and PW2. It discarded the evidence of PW2 on the ground that the inquest report did not disclose his name as an eyewitness, and further held that the delayed reaching of FIR to the ilaqa Magistrate made the presence of PW1 and PW2 doubtful. The other reason assigned by the Court while recording acquittal was that PW1 and PW2 were interested witnesses being relatives of the deceased and no independent witness was examined by the prosecution.

In appeal to this Court, the State challenged the said judgment of High Court.

Allowing the appeals, the Court

HELD: 1. The High Court erroneously discarded the evidence of P.W.2 merely on the ground that the inquest report does not disclose his name as an eyewitness. In cross-examination, P.W.1 categorically stated that P.W.2 was present at the scene during the time of inquest and until the dead body was taken to the hospital. The High Court failed to take note that in the FIR the name of P.W.2 prominently figures as an eyewitness. This apart, P.W.2 in his deposition clearly stated that he was present at the spot at the time of inquest report. He has also stated that he was examined by the police at the scene during the time of inquest and his statement was recorded. The statement of P.W.2 was corroborated by the statement of P.W.3, and further corroborated by P.W.4, the Village Administrative Officer and a panch witness to the inquest report. P.W.5 also corroborated the evidence of P.W.2. In view of the direct evidence of prosecution witnesses regarding the presence of P.W.2 at the spot at the time of the inquest report, the finding recorded by the High Court is clearly perverse. [205-B-D, E]

2. Why and how the FIR lodged at 2.30 p.m. reached the Ilaqa

A Magistrate at mid night should have been explained by the I.O., PW9 if such question was put to him. But throughout the entire examination and cross-examination of the I.O. not even a suggestion was put to him about the delay of F.I.R. reaching the Ilaqa Magistrate at mid night. If such a question was put to the I.O. he should have explained the delay, if any, because in the instant case one of the important circumstances that could B have delayed the FIR reaching the Ilaqa Magistrate is that on the same day another murder had taken place at 7.30 a.m. in which brother-in-law of the deceased was murdered which case was also investigated by the I.O., P.W.9. The High Court was, therefore, clearly in error in holding that the delay of FIR reaching Ilaqa Magistrate at mid night would throw a C suspicion about the presence of P.W.1 and P.W.2. The evidence of P.W.1 and P.W.2 is categorical with regard to the participation of each accused in giving blow to the deceased with a particular weapon.

[205-G-H; 206-A-B]

3.1. It is a well-established principle of law that testimony of a witness D otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or E the other either because of animosity or some other reasons. [207-A-B]

3.2. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being F threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and G depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. [207-C-E]

4. Regarding non-examination of an independent witness P.W.9, the H I.O. stated that on that day he went to the place of incident and inquired

about the witness but none came forward to reveal about the case due to fear. He has also stated that due to double murder in the town in a single day there was terror in public and he imposed Section 144, IPC. In such a situation surcharged with tension and fear psychosis, it is not expected of any witness to come and depose about the incident even though they may have seen it. Non-examination of independent witnesses, in such a situation, would be no ground to discard the otherwise creditworthy testimony of P.W.1 and P.W.2, which inspires confidence.

[207-F-G-H]

5. Minor discrepancies in the statement of prosecution witnesses pointed out by the respondents need not detain this Court any longer. Every discrepancy in the witness statement is not fatal to the prosecution's case. The discrepancy, which does not materially affect the prosecution case, does not create any infirmities. [207-H; 208-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1401-1402 of 1999.

From the Judgment and Order dated of the Andhra Pradesh High Court in Crl.A. Nos. 1727/97 and 18/98.

P. Vinay Kumar, Mrs. D. Bharathi Reddy and Ms. Sneha Bhaskaran for the Appellant.

L. Nageswar Rao, G. Ramakrishna Prasad, K.V. Vishwanathan, Mohd. Wasay Khan, Mr. K.P. Kydashanatha Pillai, Suyodhan Byrapancni and S. Udaya Kumar Sagar for the Respondent.

The Judgment of the Court was delivered by

H.K. SEMA, J. 23 accused in all were put to trial before the Trial Court under Sections 148/302/149 IPC. A-21 died before the Trial commenced. A-1 to A-20, A-22 and A-23 faced the trial. The Trial Court convicted A-2, 3, 6, 12 and 14 under Section 148 and sentenced to rigorous imprisonment for three years. The Trial Court also found A-2, 3, 6, 12 and 14 guilty under Section 302 and sentenced to rigorous imprisonment for life and a fine of Rs.2000/- in default three months rigorous imprisonment. Being aggrieved, two appeals were preferred before the High Court. Criminal Appeal No. 1727 of 1997 was preferred by Sathuluri Rayappa A-2, Sathuluri Chalapathi A-3, Sathuluri Dibbaraju A-6 and Garapati Mastan A-12. Criminal Appeal No. 18

of 1998 was separately preferred by Satuluri Milke Raju A-14. By the impugned order the High Court acquitted all of them. Hence these appeals by special leave by the State of Andhra Pradesh.

Briefly stated the facts are as follows:

The accused and the material prosecution witnesses were the residents of village Chilakaluripeta. The deceased Pilli Mohan Rao was also the resident of the same village. Eyewitness P.W.1 Pilli Subba Rao is the brother of the deceased. The deceased Pilli Mohan Rao is the brother-in-law of another eyewitness P.W.2. The village Malapalli of Chilakaluripeta is a faction-ridden village. One group was led by A-6 who belonged to C.P.M party and the deceased who also belonged to C.P.M party led another group. Since 1984 there were several criminal cases against each other among these groups. On 7.4.1992 A-1 and two others stabbed the son of the deceased. After the said incident, the deceased shifted his family from Malapalli to Sanjeeva Colony in Chilakaluripeta to his sister's house. It is the case of the prosecution that on 24.7.1992 at about 7.00 a.m. all the accused persons passed in front of the house of P.W.1 stating that they had killed Pedda Sambaiah and they would kill the deceased Pilli Mohan Rao. P.W.1 having heard the conversation went to his sister's house where the deceased and his family were residing. P.W.1 narrated the story to the deceased and asked him to escape. P.W.1 and the deceased then came to Narsaraopet bus stop of Chilakaluripeta. Then they saw all the accused coming towards them armed with deadly weapons. On seeing the accused they started running and the accused chased the deceased. It is the prosecution case that Sathuluri Dibbaraju A-6 axed on the back of the deceased, Sathuluri Rayappa A-2 hit him on the left side of the chest, Sathuluri Milke Raju A-14 also axed on the back of the deceased, Sathuluri Chalapathi A-3 beat on the back side of neck of the deceased and Garapati Mastan A-12 speared on the back of the deceased. All the other accused meanwhile watched to prevent others from coming there. On hearing hue and cry of the deceased the neighbours came out, by that time all the accused ran away. It is further stated that after the incident P.W.1 and P.W.2 went near the body and found the deceased dead. Thereafter, P.W.1 went to the police station and lodged the report with Head Constable P.W.8 at Town Police Station. P.W.9 the C.I. took up the investigation and in course of the investigation, statement of prosecution witnesses were recorded, documents collected and having found that *prima facie* case was established against the accused, submitted the chargesheet. Later, on appreciation of evidence and documents collected during the course of the investigation and having found

the case established against the accused during the trial, the Trial Court convicted the appellants as aforesaid. A

The High Court doubted the presence of P.W.1 and P.W.2 who are eyewitnesses to the occurrence and discarded their testimony. The High Court, in our view, erroneously discarded the evidence of P.W.2 merely on the ground that in inquest report (Ex.P.2) it does not disclose the name of P.W.2 as an eyewitness. In Ex.P.2 a very detailed statement of P.W.1 has been recorded. In cross-examination P.W.1 categorically stated that P.W.2 Valleru Devadanam was present at the scene during the time of inquest and until the dead body was taken to the hospital. The High Court, has failed to take note that in the first information report the name of P.W.2 prominently figures as an eyewitness. This apart, P.W.2 in his deposition clearly stated that he was present at the spot at the time of inquest report. He has also stated that he was examined by the police at the scene during the time of inquest and his statement was recorded. The statement of P.W.2 that he was present at the spot at the time of inquest report prepared by the police was corroborated by the statement of P.W.3 Kondamuthi Bulli Kotamma. He has categorically stated that P.W.2 was present at the spot at the time of inquest report. The statement of P.W.2 was further corroborated by P.W.4 Challa Venkata Hanumanthu Vijaya Kumar, who is a village Administrative Officer and a panch witness to the inquest report. He has stated that two witnesses were examined at the time of inquest report. Further P.W.5 Rama Chandra Prasad also corroborated the evidence of P.W.2 that P.W.2 was present at the time of the inquest report. In view of the direct evidence of prosecution witnesses regarding the presence of P.W.2 at the spot at the time of the inquest report the finding recorded by the High Court is clearly perverse. B C D E

The High Court doubted the presence of P.W.1 on the ground that he gave the first information report (ExP.1) at 2.30 p.m. on 24.7.1992 at the police station which was doubtful because the endorsement of the Magistrate in Ex.P.1 showed that he received the first information report at 12 mid night. It is not disputed that the incident had taken place on 24.7.1992 at 12.30 noon. P.W. 1 categorically stated that he went to the police station and lodged the FIR (Ex.P.1) at 2.30 p.m. This statement is corroborated by P.W.8, police head constable that P.W.1 lodged the FIR at 2.30 p.m. Why and how the FIR lodged at 2.30 p.m. reached the ilaqa Magistrate at 12 mid night should have been explained by the I.O. if such question was put to him. Admittedly, on the same day at 7.30 a.m. another murder, that of Pedda Sambaiah who was brother-in-law of the deceased had taken place and the F G H

A same case was also investigated by the I.O., P.W.9. We have been taken through the entire examination and cross-examination of I.O. and not even a suggestion has been put to him about the delay of F.I.R. reaching the ilaqa Magistrate at 12 mid night. If such a question was put to the I.O. he should have explained the delay, if any, because in the instant case one of the important circumstances that could have delayed the FIR reaching the ilaqa B Magistrate is that on the same day another murder had taken place at 7.30 a.m. in which one Pedda Sambaiah brother-in-law of the deceased was murdered. The High Court was, therefore, clearly in error in holding that the delay of FIR reaching ilaqa Magistrate at mid night would throw a suspicion about the presence of P.W.1 and P.W.2. The evidence of P.W.1 and P.W.2 C is categorical with regard to the participation of each accused in giving blow to the deceased with a particular weapon.

P.W.7 Dr.S.Lalithakumari conducted the post mortem examination and found the following external injuries on the body of the deceased:

D 1. A cut injury in the occipital region of the head 5cms X 1cms x bone deep ecchymosis present on deep dissection.

2. An incised wound of 2 cms length and 4 cms deep near the right side of the thorasic spine. Vertical in direction. Edges clear cut. Ecchymosis present underlying tissues.

E

3. A cut injury of 6X3X7 cms deep in the center of the lumbar region over the 3rd lumber spine. On deep dissection ecchymosis present. 3rd lumbar vertibra cut. The injury is transverse in direction. Edges are clear cut.

F 4. A stab injury in front of the left of the left side of the chest. Transverse in direction 4X2X7 cm deep. Edges are clear cut. The injury is just below the left nipple. Ecchomisis present.

5. A deep cut injury of 6X3X8 cms deep in the left lumbar region. Transverse in direction. Edges are clear cut. Ecchomosis present."

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The external injuries as described by the P.W.7; injury No.1 corresponds to axe injury caused by A-3, injury No.2 corresponds to spear injury caused by A-12, external injury No.3 corresponds to axe injury caused by A-6, external injury No.4 corresponds to axe injury caused by A-2 and external injury No.5 corresponds to axe injury caused by A-14.

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The other reason assigned by the High Court in recording acquittal of the accused is that P.W.1 and P.W.2 were interested witnesses being relations of deceased and no independent witness was examined by the prosecution. By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.

On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of P.W.1 and P.W.2 on the sole ground that they are interested witnesses being relatives of the deceased.

Regarding non examination of an independent witness P.W.9, K. Bhupal Singh the investigating officer stated that on that day he went to the place of incident and inquired about the witness but none came forward to reveal about the case due to fear. He has also stated that due to double murder in the town in a single day there was terror in public and he imposed Section 144. In such a situation surcharged with tension and fear psychosis it is not expected of any witness to come and depose about the incident even though they may have seen. Non-examination of independent witnesses, in such a situation, would be no ground to discard the otherwise creditworthy testimony of P.W.1 and P.W.2, which inspires confidence.

Minor discrepancies in the statement of prosecution witnesses pointed out by the counsel for the respondents need not detain us any longer. Every

A discrepancy in the witness statement is not fatal to the prosecution's case. The discrepancy, which does not materially affect the prosecution case, does not create any infirmities.

In the result, these appeals deserve to be allowed. The impugned order of the High Court acquitting the accused (respondents herein) is hereby B quashed and set-aside. The order of the Trial Court convicting the respondents is restored. The respondents are directed to be taken into custody forthwith to serve out the remaining part of the sentence. Compliance report should be sent within one month.

B.B.B. Appeals allowed.