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DAULATRAM S/O SADRAM TELI
v.
STATE OF CHHATTISGARH
(Criminal Appeal No. 1493 of 2008)

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SEPTEMBER 19, 2008
[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Penal Code, 1860; Ss. 302 and 307:

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Assault and murder – Conviction – Acquittal of co-accused – Conviction of accused based on evidence of relative eye witnesses – Correctness of – Held: Evidence of relative eye witnesses cannot per se be discarded – Foundation has to be laid if plea of false implication is made – In the instant case, evidence of PW3 and PW5, relative witnesses, found cogent, credible and reliable – Acquittal of co-accused cannot be a ground for holding conviction of other accused infirm – Hence, Courts below rightly convicted the accused on the basis of evidence of eye witnesses – Testimony of relative eye witnesses – Reliance upon – Scheduled Caste and Scheduled Tribes (Atrocities) Act, 1989 – S.3(2)(5).

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According to the prosecution, on the fateful day, appellant and another armed with weapons entered into the field and started abusing the complainant, PW3, and his father in filthy language and attacked his father with the weapons. Another accomplice 'D' armed with sickle also ran after him. On reaching the village, he informed about the incident to his sister and other relatives and later succumbed to the injuries. PW3 lodged an FIR. Police investigated the matter and submitted a charge-sheet against the appellant and other two accused persons. Trial Court found two accused persons guilty of committing the offence punishable u/s.302 IPC and s.2(v) of the Scheduled Castes and Scheduled Tribes (Atrocities) Act, 1989 and

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imposed life sentence on them. However, third accused 'D' was convicted for committing the offence punishable u/s.352 IPC. The High Court affirmed the conviction and sentence against the appellant; however, co-accused was acquitted. Hence the present appeal. A

Dismissing the appeal, the Court B

HELD: 1.1 Merely because the eye-witnesses are family members their evidence cannot per se be discarded. (Para – 7) [739-C]

1.2 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. (Para – 7) [739-D-E] C D

Dalip Singh and Ors. v. The State of Punjab AIR (1953) SC 364; *Guli Chand and Ors. v. State of Rajasthan* (1974) 3 SCC 698 and *Vadivelu Thevar v. State of Madras* AIR (1957) SC 614 – referred to. E

1.3 The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. (Para – 10) [740-D]

Dalip Singh and Ors. v. The State of Punjab AIR (1953) SC 364 – relied on. F

1.4 Merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighborhood may be replete with other residents also. (Para – 14) [741-G-H] G

- A *Masalti and Ors. v. State of U.P.* AIR (1965) SC 202; *State of Punjab v. Jagir Singh* AIR (1973) SC 2407; *Lehna v. State of Haryana* (2002) 3 SCC 76; *Gangadhar Behera and Ors. v. State of Orissa* (2002) 8 SCC 381; *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra* (2005) 10 SCC 404; *Salim Saheb v. State of M.P.* (2007) 1 SCC 699; *Vinay Kumar Rai and Anr. v. State of Bihar* (2008) AIR SCW 5541 and *State of Rajasthan v. Teja Ram and Ors.* AIR (1999) SC 1776 – referred to.

- C 2. The evidence of PWs. 3 and 5 is cogent, credible and reliable. The fact that co-accused has been acquitted, cannot be a ground for holding that appellants' conviction is infirm. (Para – 15) [742-B]

Case Law Reference

D	AIR (1953) SC 364	Referred to	Para - 8
	(1974) 3 SCC 698	Referred to	Para - 9
	AIR (1957) SC 614	Referred to	Para - 9
E	AIR (1953) SC 364	Relied on	Para - 8
	AIR (1965) SC 202	Referred to	Para - 11
	AIR (1973) SC 2407	Referred to	Para - 12
	(2002) 3 SCC 76	Referred to	Para - 12
F	(2002) 8 SCC 381	Referred to	Para - 12
	(2005) 10 SCC 404	Referred to	Para -13
	(2007) 1 SCC 699	Referred to	Para - 13
G	(2008) AIR SCW 5541	Referred to	Para - 13
	AIR (1999) SC 1776	Referred to	Para - 14

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1493 of 2008

- H From the final Judgment and Order dated 23.7.2007 of

the High Court of Chattisgarh at Bilaspur in CRLA No. 803 of A
2001

V. Sudeer for the Appellant.

Atul Jha and Dharmendra Kumar Singh for the Respon- B
dent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Divi- C
sion Bench of the Chattisgarh High Court, dismissing the ap-
peal filed by the appellant. Challenge in the appeal was to the
judgment of the learned Special Judge, Raipur, in S.T. No.53/
2000 who found the appellant guilty for the offence punishable
under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') D
and Section 3(2)(v) of the Schedule Castes and Schedule Tribes
(Atrocities) Act, 1989 (in short the 'Atrocities Act') Life sentence
was imposed in respect of the offence 302 IPC, however, no
separate sentence was imposed for the offence relatable to
Section 3(2)(v) of the Atrocities Act.

3. Prosecution version, in a nutshell, is as follows: E

On 20.8.2000 at about 6 p.m. Bholaram (PW-3) lodged a
report in the Police Station Basna before Station House Officer
D.K. Sharma (PW-9) to the effect that today at about 3 p.m. F
when he along with his father was digging groundnuts in their
agricultural field, the accused Daulatram and Nepal entered their
agricultural field carrying axe in their hands. Damodar was also
there. Accused Daulatram and Nepal started abusing in the
name of the mother. They attacked his father with axe whereas
accused Damodar was after him carrying sickle in his hand. He G
ran towards the village. On the way, Sahdev Teli met him. After
reaching the village, he informed his sister Rohnibai and
Parshuram. Thereafter, he along with Parshuram went to the
village Devri and informed his uncle Dhoop Singh.

Receiving this report, Station House Officer, Dinesh H

A Sharma (PW-9) registered FIR Ex.P/7 for commission of offence under Section 302, 307/34 of the IPC and Section 3(2)(v) of the SC/ST Act. Intimation Ex.P/8 was also given by Bholaram. The Investigating Officer left the scene of occurrence, after giving notice Ex.P/10 to the Panchas, prepared inquest Ex.P/11 on the body of the deceased. Site plan Ex.P/9 was prepared. Based on the memorandum Ex.P/4 given by Daulat Ram, axe was recovered from him under Ex.P/1. Based on the memorandum Ex.P/5 given by Nepal, axe was recovered under Ex.P/2. Based on the memorandum Ex.P/6 given by accused Damodar, sickle was seized under Ex.P/3. The dead body of the deceased was sent for post mortem examination under Ex.P/14 to the Primary Health Centre, Basna, where Dr. H.L. Jangde (PW-7) conducted postmortem report Ex.P/12. He opined that cause of death was haemorrhagic shock due to head injury and it was homicidal in nature.

D After completion of the investigation, charge sheet was filed against accused in the court of Judicial Magistrate, 1st Class, Mahasamund, who in turn committed the case to the Sessions Judge, Raipur, from where learned Special Judge received the case on transfer for trial.

E The prosecution in order to establish the charge against the accused persons examined 13 witnesses. Statements of accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. They examined one defence witness, namely, Vikram.

F Learned Special Judge after considering materials placed by respective parties, convicted and sentenced the accused/appellants as aforesaid. However, accused Damodar was convicted under Section 352, IPC.

G 4. The conviction and sentence were challenged before the High Court by both the present appellant and the accused, H Nepal. The High Court found the evidence to be credible and

cogent and dismissed the appeal of appellant, so far as it relates to Section 302 IPC. However, co-accused Nepal was directed to be acquitted. A

5. Primary stand in support of the appeal was that the informant (PW.3) and the PW.5 are the interested witnesses and, therefore, their evidence should have been discarded. B

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

"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 G
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A 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
B 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
C 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 wit-
D ness, 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
E 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
F 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
G 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
H 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 decisions 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 also highlighted in *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra* [2005(10) SCC 404], *Salim Saheb v. State of M.P.* (2007(1) SCC 699) and *Vinay Kumar Rai and Anr. v. State of Bihar* (2008 AIR SCW 5541).

14. The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighborhood may be replete with other residents also. [See: State of Rajasthan v. Teja Ram and Ors. (AIR 1999 SC 1776)].

A 15. The evidence of PWs. 3 and 5 is cogent, credible and reliable. It was submitted that Nepal was acquitted and, therefore, the appellant should not have been convicted. The High Court has found that there was inconsistency in the evidence of PWs. 3 and 5 so far as Nepal's presence is concerned. In any event, the evidence of PWs. 3 and 5 is cogent, credible and reliable. The fact that co-accused has been acquitted, cannot be a ground for holding that appellants' conviction is infirm.

16. The impugned judgment does not warrant any interference. The appeal is dismissed.

C S.K.S.

Appeal dismissed.