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RAM SINGH

v.

STATE OF MADHYA PRADESH  
(Criminal Appeal No. 1599 of 2008)

OCTOBER 13, 2008

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[DR. ARIJIT PASAYAT AND J.M. PANCHAL, JJ.]

*Criminal trial:*

*Penal Code, 1860; Ss. 302, 452 and 504:*

C

*Murder – Trial Court found accused persons guilty of committing offence of murder relying on testimony of relative eye-witnesses and convicted them – Affirmed by High Court – Correctness of – Held: Relationship is not a factor to affect credibility of a witness – In the instant case, the ground that the witness being close relative, thus, partisan witness and should not be relied upon, has no substance – Presence of PWs 2 and 3, wife and son of the deceased, at the spot is quite natural as occurrence took place inside the house of the deceased – Moreover, except some minor discrepancies, nothing substantial has been brought out in the cross-examination to discard their evidence – Medical evidence clearly shows existence of injuries on the body of the deceased as indicated by PW2 – Hence, no interference with the impugned order called for – Evidence – Circumstantial evidence – Testimony of relative witnesses – Reliance upon.*

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**According to the prosecution, appellant and another person gave several blows with knife on the person of the deceased in the presence of his wife (PW2) and son (PW3). The deceased succumbed to the injuries. An F.I.R. was lodged in the Police Station. The Police, after investigating the case, submitted the charge-sheet against the accused persons. The Trial Court found the evidence of the eyewitnesses credible and cogent and held both the**

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accused persons guilty of committing the offences punishable under Sections 302, 452 and 504 IPC. Appeal filed thereagainst by the accused-appellant was dismissed. Hence the present appeal. A

Appellant contended that the presence of PWs 2 and 3 on the spot of occurrence is highly suspicious and they being relatives of the deceased, have falsely implicated the accused persons. B

Dismissing the appeal, the Court

HELD: 1.1 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 – 8) [363-B] 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 – relied on.* E

1.2 The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. (Para – 11) [364-A] F

*Dalip Singh and Ors. v. The State of Punjab AIR (1953) SC 364; Masalti and Ors. v. State of U.P. AIR (1965) SC 202 and State of Rajasthan v. Teja Ram and Ors. AIR (1999) SC 1776 – referred to.*

1.3 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 G H

A the neighbourhood may be replete with other residents also. (Para – 13) [365-C]

*Sucha Singh and Anr. v. State of Punjab (2003) 7 SCC 643; Hari Ram v. State of U.P. (2004) 8 SCC 146 and Ponnamm Chandraiah v. State of A.P. (2008) AIR SCW 5429 – relied on.*

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1.4 The presence of PWs 2 and 3 at the spot is quite natural because the occurrence took place inside the house of the deceased. Additionally, PWs 1 and 7 are immediate post-occurrence witnesses who have stated that when they reached the house of the deceased on hearing the cries for help of PWs 2 and 3, PW-2 told them that her husband has been assaulted by the present appellant. It is to be noted that except some minor discrepancies, nothing substantial has been brought in the cross examination of PWs 2 and 3 to discard their evidence. PW-2's evidence is specific and clear to the extent that the present appellant gave first blow in the abdomen of the deceased and then near the naval and, thereafter, on the chest and in the neck. The medical evidence clearly shows the existence of the injuries at the places indicated by PW-2. (Para – 14) [365 E-G]

#### CASE LAW REFERENCE

F	AIR (1953) SC 364	Relied on	Para - 9
	(1974) 3 SCC 698	Relied on	Para - 10
	AIR (1957) SC 614	Relied on	Para - 10
	AIR (1953) SC 364	Referred to	Para - 9
G	AIR (1965) SC 202	Referred to	Para - 12
	AIR (1999) SC 1776	Referred to	Para - 13
	(2003) 7 SCC 643	Relied on	Para - 13
	(2004) 8 SCC 146	Relied on	Para - 13
H	(2008) AIR SCW 5429	Relied on	Para - 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A  
No. 1599 of 2008

From the final Judgment and Order dated 6.12.2006 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 287 of 1999 B

Shakeel Ahmed and Arna Das for the Appellant.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J. 1.** Leave granted. C

2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court dismissing the appeal filed by the appellant and upholding his conviction for offences punishable under Sections 302, 452 and 504 of the Indian Penal Code, 1860 (in short 'the IPC') and sentence of imprisonment for life, rigorous imprisonment for three years and one year respectively with fine and default stipulations. D

3. Appellant faced trial along with one Sukku alias Sikku, who was convicted for offence punishable under Section 302 read with Section 34 IPC and the other offences, as in the case of present appellant. E

4. Both the accused persons had preferred appeals before the High Court questioning correctness of the judgment recorded by learned 6<sup>th</sup> Additional Sessions Judge, Jabalpur, in Sessions Trial No.19 of 1997. F

5. In brief the prosecution is that Ganesh Prasad, who is the author of the FIR heard hue and cry of Shakunbai at about 8-9 PM as a result of which he came out from his house and saw appellant Ram Singh carrying knife in his hand was coming out from the house of Laddu alias Baisakhu (hereinafter referred to as 'the deceased') and was running away. Behind him co-accused Sukku was also running away. Thereafter, this person came to the house of the deceased and asked Shakunbai, who is wife G  
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A of the deceased, that how the incident had occurred, on which she replied that Sukku caught hold of the hands of the deceased and thereafter appellant Ramsingh dealt several blows of knife on the person of the deceased as a result of which he died.

B Thereafter, Ganesh Parsad went to lodge the First Information Report and on lodging the FIR, law was set in motion. The investigating agency, in order to investigate the case, arrived at the spot, prepared necessary panchnama, seized the dead body and sent it for post-mortem; seized ordinary and blood stained earth; recorded the statement of the witnesses  
C and arrested the accused persons and at the instance of appellant Ramsingh seized a knife which was used as a weapon in the commission of the offence.

D After the investigation was over, a charge-sheet was submitted which, on its turn, committed the case to the Court of Session from where it was received by the trial court for its trial.

E Since the accused persons abjured their guilt, trial was held. Nine witnesses were examined to further the prosecution version. Of them, Shakunbai (PW-2) was the widow of the deceased and Dhani Ram (PW-3) is his son, who claimed to be eye-witnesses. Two witnesses were examined by the accused persons in support of their plea of innocence. The Trial Court found the evidence of the eye witnesses credible and cogent and, therefore, held both the accused persons guilty. It did not find any substance in the plea of the accused persons that the  
F evidence of eye witnesses should be discarded as they are related to the deceased.

G The stand of innocence and the plea to discard the evidence of PWs 2 and 3 on the ground that they are related to the deceased were reiterated before the High Court. By the impugned judgment, the appeals were dismissed.

H 6. Learned counsel for the appellant submitted that the presence of PWs 2 and 3 on the spot of occurrence is highly suspicious and they being relatives of the deceased, have falsely implicated the accused persons for reasons best known to them.

7. Learned counsel for the State supported the judgments of the courts below. A

8. 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. B

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

"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." D E F G

10. 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. H

A 11. We may also observe that the ground that the witness  
being a close relative and consequently being a partisan wit-  
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  
B 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:

C "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  
D 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  
E 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."

12. Again in *Masalti and Ors. v. State of U.P.* (AIR 1965  
SC 202) this Court observed: (p, 209-210 para 14):

F "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  
G 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."

H 13. As observed by this Court in *State of Rajasthan v. Teja  
Ram and Ors.* (AIR 1999 SC 1776) the over-insistence on wit-

nesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be 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 neighbourhood may be replete with other residents also. [See *Sucha Singh and Anr. v. State of Punjab* (2003 (7) SCC 643), *Hari Ram v. State of U.P.* (2004 (8) SCC 146) and *Ponnam Chandraiah v. State of A.P.* (2008 AIR SCW 5429)].

14. The presence of PWs 2 and 3 at the spot is quite natural because the occurrence took place inside the house of the deceased. Additionally, PWs 1 and 7 are immediate post occurrence witnesses who have stated that when they reached the house of the deceased on hearing the cries for help of PWs 2 and 3, PW-2 told them that her husband has been assaulted by the present appellant. It is to be noted that except some minor discrepancies, nothing substantial has been brought in the cross examination of PWs 2 and 3 to discard their evidence. PW-2's evidence is specific and clear to the extent that the present appellant gave first blow in the abdomen of the deceased and then near the naval and, thereafter, on the chest and in the neck. The medical evidence clearly shows the existence of the injuries at the places indicated by PW-2.

15. Above being the position, there is no merit in this appeal, which is, accordingly, dismissed.

S.K.S.

Appeal dismissed. H