

RAJU @ BALACHANDRAN & ORS.

v.

STATE OF TAMIL NADU
(Criminal Appeal No. 1614 of 2009)

NOVEMBER 27, 2012

[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

Penal Code, 1860 – ss.302, 326 and 341 and s.302 r/w s.34 – Homicidal attack on the brother and mother of PW5 leading to their death – Testimony of PW5 – Conviction of appellants by Courts below on that basis – Challenge to – Held: PW5's description of the events was simple and straightforward and the cross-examination did not demolish his version of the events – Facts evident from record lead to the clear conclusion that PW5 was present at the place of occurrence and was an eye witness to the incident – His testimony supported in its essential details by testimony of the other witnesses – Evidence of PW5 credible notwithstanding that he was a related and interested witness – Conclusion arrived at, by the Courts below not shown to be perverse nor shown to be deserving reversal – Conviction of appellants accordingly upheld.

Witness – Evidence of related and interested witness having enmity with the accused – Appreciation of – Held: A court should examine the evidence of such a witness with greater care and caution than the evidence of a third party disinterested and unrelated witness – 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.

Witness – Different categories of witnesses – 1) A third

- A *party disinterested and unrelated witness (such as a bystander or passer-by); 2) a third party interested witness (such as a trap witness); 3) a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; and 4) a related and therefore*
 B *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.*

C The brother and mother of PW5 were victims of a homicidal attack. PW5's brother died on the spot while his mother was grievously injured and died subsequently. The trial Court and the High Court believing the testimony of PW-5 held that his brother and mother were murdered by the appellants and convicted them. Appellant no.1 was convicted under Sections 302,
 D 341 and 326. The other two appellants were convicted under Section 302 r/w Section 34 IPC.

E In the instant appeal, two contentions were advanced by the appellants - firstly, that since PW-5 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 and secondly, that the prosecution case was doubtful since there was no evidence except the unreliable testimony of
 F PW-5.

Dismissing the appeal, the Court

G HELD: 1.1. For the time being, this Court is 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
 H 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. [Para 33] [121-B-D]

1.2. In the present case, PW5 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. [Para 34] [121-E]

1.3. 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. [Para 38] [124-C-D]

1.4. On going through the evidence of PW-5 by applying the discerning scrutiny standard, it is 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 'S' may have been the assailant since the brother of PW5 had an illicit relationship with S's first wife. This was ruled out by PW-5 who did not want to

A shield the real assailant and put the blame for the occurrence on someone else. [Para 39] [124-F-H]

B 1.5. Both the Trial Court and the High Court have concurrently held that PW-5 was an eye witness to the murder of his brother and mother. 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. [Para 40] [125-A-B]

C 1.6. The presence of PW-5 at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 and his testimony. Even though PW-1 may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on the brother and mother of PW5. 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 the brother of PW5 died on the spot and that PW5's mother was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 took his mother to the hospital immediately after she was attacked is confirmed by PW-1. 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 was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable and is supported in its essential details by the testimony of the other witnesses. [Para 41] [125-C-F]

G 1.7. The evidence of PW-5 is found to be credible notwithstanding that he was a related and interested witness. Accordingly, the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court is upheld. [Para 42] [124-G]

H *State of Rajasthan v. Kalki* (1981) 2 SCC 752: 1981 (3) SCR 504 – doubted.

Dalip Singh v. State of Punjab 1954 SCR 145 and *Sarwan Singh v. State of Punjab* (1976) 4 SCC 369 – relied on. A

State of Bihar v. Basawan Singh AIR 1958 SC 500: 1959 SCR 195; *Darya Singh v. State of Punjab* (1964) 3 SCR 397; *Waman v. State of Maharashtra* (2011) 7 SCC 295: 2011 (6) SCR 1072; *Balraje v. State of Maharashtra* (2010) 6 SCC 673: 2010 (6) SCR 764; *Prahlad Patel v. State of Madhya Pradesh* (2011) 4 SCC 262: 2011 (3) SCR 471; *Israr v. State of Uttar Pradesh* (2005) 9 SCC 616: 2004 (6) Suppl. SCR 695; *S. Sudershan Reddy v. State of Andhra Pradesh* (2006) 10 SCC 163: 2006 (3) Suppl. SCR 743; *State of Uttar Pradesh v. Naresh* (2011) 4 SCC 324: 2011 (4) SCR 1176; *Jarnail Singh v. State of Punjab* (2009) 9 SCC 719: 2009 (13) SCR 774 and *Vishnu v. State of Rajasthan* (2009) 10 SCC 477 – referred to. B C D

Case Law Reference:

1981 (3) SCR 504	doubted	Para 30	
1959 SCR 195	referred to	Para 31	E
1954 SCR 145	relied on	Paras 35, 38	
(1964) 3 SCR 397	referred to	Para 36	
2011 (6) SCR 1072	referred to	Para 37	F
(1976) 4 SCC 369	relied on	Para 38	
2010 (6) SCR 764	referred to	Para 37	
2011 (3) SCR 471	referred to	Para 37	G
2004 (6) Suppl. SCR 695	referred to	Para 37	
2006 (3) Suppl. SCR 743	referred to	Para 37	
2011 (4) SCR 1176	referred to	Para 37	H

A 2009 (13) SCR 774 referred to Para 37
 (2009) 10 SCC 477 referred to Para 37

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 No. 1614 of 2009.

B From the Judgment & Order dated 02.8.2006 of the High
 Court of Judicature of Madras at Madurai in Criminal Appeal
 No. 4 of 2005.

C R.V. Kameshwaran for the Appellants.

M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

D **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
 E 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.

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

The facts:

G 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

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in their village. The enmity dated back to about 4 or 5 years prior to the incident that we are concerned with. A

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. B C

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. D

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

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. F

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 G H

- A 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.

- B 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.

C **Decision of the Trial Court:**

- D 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).

- E 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.

- F 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.
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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. A
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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. C

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. D

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. E
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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. G

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 H

A 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.

B **Decision of the High Court:**

C 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.

D 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.

F 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.

G 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

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by the Trial Judge and there was no reason for the High Court to disbelieve him. A

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. B

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. C

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

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. E F

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. G H

A 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:

B "True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

D 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:

F "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."

H 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

A 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
 B 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
 C 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
 D prudence. There is no such general rule. Each case must
 be limited to and be governed by its own facts."

36. Now the evidence of such a witness should be looked
 at was again considered in *Darya Singh v. State of Punjab*,
 D (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
 E 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:

F "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,
 G 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
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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

A 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
 B 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
 C 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
 D 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
 E 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
 F 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-
 G 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
 H 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.

B.B.B.

Appeal dismissed.