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KUKAPALLI MOHAN RAO

v.

STATE OF A.P.

(Criminal Appeal No. 316 of 2008)

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DECEMBER 11, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

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Penal Code, 1860 - s.302 - Murder - Eyewitness account - Allegation that appellant hacked the deceased with an axe as he suspected that the latter was having illicit relationship with his wife - Conviction of appellant u/s.302 IPC - Justification - Held: Justified - PW2 (wife of deceased) and PW3 (brother of deceased) were crucial witnesses to establish that it was the appellant who had committed the crime - Evidence of PW2 was trustworthy and it cannot be said that she was implicating the appellant - She had no motive to do so as well - Direct evidence of illicit intimacy cannot always be expected, but, taking into consideration the evidence of PW5 and PWs 8 and 9, the prosecution could establish that appellant had a grudge or ill-feeling towards the deceased that led him to commit the murder - Prosecution also proved that axe was seized from the scene of occurrence by PW 15, in the presence of PWs 1 and 11 - Also, blood of human origin was detected on the axe - Further, there was sufficient explanation for the delay of 10 hours in intimating the offence to the police - The prosecution had succeeded in establishing the guilt of the appellant beyond all reasonable doubt.

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FIR - Evidentiary value of - Held: FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker u/s.161 of the Evidence Act or to contradict him u/s.145 of the Act - It is not the requirement of the law that the minutest details be recorded in the FIR lodged immediately after the occurrence - Evidence Act, 1872 - ss.145 and 161.

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Motive - When irrelevant - Held: Motive would be irrelevant when there is un-impeachable oral evidence. A

The prosecution case was that the accused-appellant committed the murder of the deceased as he suspected that the latter was having illicit relationship with his wife. The incident allegedly occurred at midnight when the deceased was sleeping in his house with his wife PW2. PW3, the brother of the deceased, was also sleeping inside the said house at that time. B

An axe was allegedly used as the weapon of offence. The deceased had sustained bleeding head injuries. PW4, the father of the deceased, informed about the death of the deceased to PW1, the Village Administrative Officer, who scribed the report Ex.P1, and presented the same to the police and, on the basis of the same, PW14, Sub Inspector of Police issued the FIR Ex. P14. The Sessions Court convicted the appellant under Section 302 IPC and sentenced him to life imprisonment. The conviction and sentence was confirmed by the High Court. C D E

In the instant appeal, the appellant contended that the evidence of PWs 2 and 3 could not be believed since they were interested witnesses; that the names of PWs 2 and 3 did not find any place in Ex.P1 report and, as such, their testimony be considered only with suspicion; that omission to mention the names of the eye-witnesses in the FIR and unexplained delay in despatch of FIR would throw serious doubt on the prosecution case; that the prosecution miserably failed to prove the alleged motive for the commission of the offence and, as such, the appellant be given the benefit of doubt; and further that there was considerable delay in registering the FIR, and thus the appellant was entitled to be acquitted. F G

Dismissing the appeal, the Court H

A HELD: 1. PWs 2 and 3 are crucial witnesses in this
case to establish that it was the accused-appellant who
had committed the crime. PW2, wife of the deceased, had
clearly deposed that she herself and daughter were
B sleeping on a cot and the deceased was sleeping on the
other cot in the same room. PW3, brother of the
deceased, and other family members were sleeping inside
the house. In the midnight on 13.6.2001, the deceased
raised a cry as "Ammo". On hearing the cries of the
deceased, she woke up and switched on the light and
C found the appellant near the deceased with an axe. Out
of fear, she called PW 3 and he rushed in. On seeing PW
3, the appellant ran away from the place throwing the axe
used for the commission of the offence. The evidence of
PW2 is trustworthy and it cannot be said that she is
D implicating the appellant. She has no motive to do so as
well. PW3, in his deposition, has categorically stated that
he has chased the appellant, but when PW2 had
informed him that the blood was bleeding from the head
of the deceased, he came back. PW3 then informed the
E incident to the brother-in-law of the deceased. PWs 3 and
5 shifted the deceased to a private hospital in a tractor
and the dead body of the deceased was brought back at
3.00 am on 14.6.2001. PW3 then informed the incident to
the brother of the deceased - PW 4 through telephone.
F PW3 has categorically stated that the appellant had
hacked the deceased with an axe and ran away and he
found the axe at the scene of occurrence. There is no
reason to disbelieve the evidence of PW 3. PW 3 also had
no reason to implicate the appellant in this crime. [Para
9] [1095-B-G]

G 2. PWs 8 and 9 stated that the appellant had indicated
to them that the deceased was having illicit intimacy with
his wife. It was stated that the appellant had informed
them that he was even prepared to go to jail by beating
H the deceased, if the deceased had not stopped that illicit

intimacy. PW13, the doctor, who conducted the post-mortem, opined that the deceased died due to shock and the head injury. PW15, the Investigating Officer, stated that he had visited the scene of offence at about 12.45 am on 14.6.2001 and seized the blood stained earth, material objects and conducted the inquest over the dead body of the deceased and sent the dead body for post-mortem examination. PW14, Sub-Inspector of Police, stated that he had registered the crime and issued the FIR. Ex.P1 report clearly discloses the commission of the offence by the appellant. There is no necessity of the detailed narration of the incident, as to how PWs2 and 3 saw it, in the FIR. PWs 2 and 3 after all are not the authors of the complaint. Their statements cannot be disbelieved on the ground that their finding the appellant on the scene of occurrence with an axe, has not found any place in the FIR. [Para 10] [1095-H; 1096-A-D]

3. FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of the Act. It is not the requirement of the law that the minutest details be recorded in the FIR lodged immediately after the occurrence. [Para 11] [1096-E-F]

Surjit Singh @ Gurmit Singh v. State of Punjab 1993 Supp. (1) SCC 208: 1992 (2) SCR 786 and *Ravi Kumar v. State of Punjab* (2005) 9 SCC 315: 2005 (2) SCR 548 - relied on.

4. The appellant submitted that the prosecution had miserably failed to prove the alleged motive for the commission of the offence, however, even assuming that the prosecution has not succeeded in establishing the motive for the commission of the offence, when there is un-impeachable oral evidence, the motive would be irrelevant. [Para 12] [1096-G; 1097-B]

A *Baitullah and Another v. State of U.P.* (1998) 1 SCC 509; *State of Himachal Pradesh v. Jeet Singh* (1999) 4 SCC 370: 1999 (1) SCR 1033 and *Nathuni Yadav and Another v. State of Bihar and Another* (1998) 2 SCC 238 - relied on.

B 5. The direct evidence of illicit intimacy cannot always be expected. But, taken into consideration of the evidence of PW 5 and PWs 8 and 9, the prosecution could establish that the appellant had a grudge or ill-feeling towards the deceased that led him to commit the murder. PWs 2 and 3 found the appellant with MO6 (axe) which was used for the commission of the offence. PWs 5 and 9 also stated that in their evidence that they found the axe near the cot at the scene of the offence. The prosecution also proved that MO6 axe was seized from the scene of occurrence by PW 15, in the presence of PW 1 and 11. MO6 axe was also sent to R.F.S.L. for analysis and from Ex.P18 report, it was observed that the blood of human origin was detected on MO6 axe. Therefore, the contention raised by the appellant that MO6 was planted, cannot be accepted. [Para 14] [1097-F-H; 1098-A]

E 6. There is also no basis in the contention raised on behalf of the appellant that there was delay in informing the incident to the police. The incident had happened at the midnight of 13.6.2001. The deceased was taken to the private hospital by PWs 3 and 5 in a tractor of PW 7, where he was declared dead. The dead body of the deceased was brought back to the house at about 3.00 am. PW 4, father of the deceased, then informed the death of the deceased to PW 1, the Village Administrative Officer, at about 8.00 am on 14.6.2001. PW 14, Sub-Inspector of Police, stated that he had registered the complaint after 10 hours from the time of the incident, i.e. in the morning of 14.6.2001. Not only that there was no inordinate delay in informing the incident to the police, there has been sufficient explanation for the delay of 10

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hours in intimating the offence to the police. [Paras 15, 17] [1098-B-D; 1099-D] A

State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73; *Jahoor and Others v. State of U.P.* 1999 Supp (1) SCC 372; *Tara Singh & Others v. State of Punjab* 1991 Supp (1) SCC 536; *Jamna v. State of U.P.* 1994 Supp (1) SCC 185 and *Ravinder Kumar and Another v. State of Punjab* (2001) 7 SCC 690: 2001 (2) Suppl. SCR 463 - relied on. B

Madudanal Augusti v. State of Kerala (1980) 4 SCC 425 - cited. C

7. In the facts and circumstances of the case, the Sessions Court and the High Court correctly came to the conclusion that the prosecution had succeeded in establishing the guilt of the appellant beyond all reasonable doubt. [Para 18] [1099-F] D

Case Law Reference:

(1980) 4 SCC 425	cited	Para 6	
1992 (2) SCR 786	relied on	Para 11	E
2005 (2) SCR 548	relied on	Para 11	
(1998) 1 SCC 509	relied on	Para 13	
1999 (1) SCR 1033	relied on	Para 13	F
(1998) 2 SCC 238	relied on	Para 13	
(1994) 1 SCC 73	relied on	Para 16	
1999 Supp (1) SCC 372	relied on	Para 16	G
1991 Supp (1) SCC 536	relied on	Para 16	
1994 Supp (1) SCC 185	relied on	Para 16	
2001 (2) Suppl. SCR 463	relied on	Para 16	H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 316 of 2008.

From the Judgment & Order dated 03.11.2006 of the High
Court of Judicature, Andhra Pradesh at Hyderabad in Criminal
B Appeal No. 2480 of 2004.

Ajay Sharma for the Appellant.

Shishir Pinaki, Amjid Mazbool, D. Mahesh Babu for the
Respondent.

C The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. The suspicion that the
deceased had illicit relationship with the wife of the accused
was the reason for this mid-night murder. The accused had
D disclosed the same to PWs 8 and 9 and requested them to
warn the deceased, or else, the accused announced that he
would deal with the same and was even prepared to go to jail.
PWs 8 and 9 warned the deceased, but the deceased reacted
stating that the accused was only suspecting him.

E 2. At mid-night 12 O'clock on 13.6.2001, the deceased
was sleeping on the western side of Pancha of his house along
with wife PW 2. PW 3, brother of the deceased, was also
sleeping inside the house along with the children of the
deceased. At midnight PW 2 heard the cries of the deceased
F and woke up and saw the accused standing near the deceased
with an axe. PW2 then called PW 3 who chased the accused,
but he escaped leaving the axe at the spot. Noticing that the
deceased was bleeding with head injury, PW 3 along with PW
G 5, brother-in-law of the deceased, took the deceased in a
tractor of PW 12 to a private hospital of PW 7, where the
deceased was declared dead. Later, PW 4, father of the
deceased, informed the death of the deceased to PW 1, the
Village Administrative Officer at 8.00 am on 14.6.2001. PW 1
H scribed the report - Ex.P1 - and presented the same to the

police on 14.6.2001 and, on the basis of the same, PW 14, Sub-Inspector of Police registered Crime No. 34 of 2001 and issued the FIR Ex.P14. A

3. PW 15, Inspector of Police, conducted the investigation and he visited the scene of occurrence and completed other formalities, including the inquest over the dead body of the deceased. PW 15 also requisitioned the services of the dog squad and seized the material object including the axe which was used for the commission of the offence. PW 13, the Civil Assistant Surgeon, held autopsy over the dead body and opined that the cause of death was due to shock and head injury. B C

4. The prosecution, in order to prove the guilt of the accused, examined PW 1 to PW 15 and marked Ex. P1 to P18 and also MOs 1 to 7. On behalf of the defence, no oral evidence was adduced, but Ex. D1 to 4 were marked. On conclusion of the examination of the prosecution witnesses, the accused was examined under Section 313 Cr.P.C. and he denied all incriminating materials appeared against him in the prosecution evidence. D E

5. Learned Sessions Judge, after completion of the trial and on going through the evidence, found the accused guilty of the offence under Section 302 IPC and sentenced him to life imprisonment, vide its judgment dated 14.9.2004. Aggrieved by the same, the accused filed Criminal Appeal No. 2480 of 2004 before the High Court of Andhra Pradesh. The High Court dismissed the appeal and confirmed the conviction and sentence awarded by the Sessions Court. Aggrieved by the same, this appeal has been preferred. F G

6. Shri Ajay Sharma, Advocate-on-Record, appearing on behalf of the appellant, submitted that the evidence of PWs 2 and 3 cannot be believed since they are interest witnesses. Further, it was also pointed that the name of PWs 2 and 3 do not find any place Ex.P1 report and, as such, their testimony H

A be considered only with suspicion. Learned counsel submitted placed reliance on the judgment of this Court in *Madudanal Augusti v. State of Kerala* (1980) 4 SCC 425 and submitted that omission to mention the names of the eye-witnesses in the FIR and unexplained delay in despatch of FIR would throw
 B serious doubt on the prosecution case. Learned counsel also submitted that the prosecution miserably failed to prove the alleged motive for the commission of the offence and, as such, the accused be given the benefit of doubt. Further, it was also pointed out that there was considerable delay in registering the
 C FIR, hence, there is scope for concoctions and confabulations. All these factors, according to the learned counsel, would be sufficient to acquit the accused giving the benefit of doubt.

7. Shri Shishir Pinaki, learned counsel appearing on behalf of the State, submitted that there is no illegality in the findings
 D recorded by the Sessions Court, which were confirmed by the High Court. The evidence of PWs 2 and 3 is reliable and crucial to the prosecution case. Further, it was also pointed out that the axe used in the commission of the offence was also recovered from the spot. Learned counsel also submitted that
 E there was no considerable delay in lodging the FIR and if, at all, there was some delay, that has been clearly explained and that explanation has been accepted both by the Sessions Court and the High Court. Learned counsel also submitted that the
 F motive for the commission of crime has been established and the evidence of PWs 8 and 9 would indicate that the accused was suspecting that the deceased had illicit intimacy with his wife PW 2. Learned counsel further submitted that even assuming that the prosecution has not succeeded in proving the motive, even then there is sufficient ocular evidence to prove
 G that the accused had committed the offence. Learned counsel submitted that there is no reason to upset the concurrent findings recorded by the Sessions Court as well as the High Court, after appreciating the oral and documentary evidence adduced by the prosecution as well as the defence.

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8. We are, in this case, concerned only with the question whether the prosecution has proved the guilt of the accused beyond all reasonable doubt and the Sessions Court and the High Court have rightly reached the conclusion that the accused has committed the offence. A

9. PWs 2 and 3 are crucial witnesses in this case to establish that it was the accused who had committed the crime. PW 2, wife of the deceased, had clearly deposed that she herself and daughter were sleeping on a cot and the deceased was sleeping on the other cot in the same room. PW3, brother of the deceased, and other family members were sleeping inside the house. In the midnight on 13.6.2001, the deceased raised a cry as "Ammo". On hearing the cries of the deceased, she woke up and switched on the light and found the accused near the deceased with an axe. Out of fear, she called PW 3 and he rushed in. On seeing PW 3, the accused ran away from the place throwing the axe used for the commission of the offence. In our view, the evidence of PW 2 is trustworthy and we have no reason to disbelieve that she is implicating the accused and she has no motive to do so as well. PW 3, in his deposition, has categorically stated that he has chased the accused, but when PW 2 had informed him that the blood was bleeding from the head of the deceased, he came back. PW 3 then informed the incident to the brother-in-law of the deceased. PWs 3 and 5 shifted the deceased to a private hospital in a tractor and the dead body of the deceased was brought back at 3.00 am on 14.6.2001. PW 3 then informed the incident to the brother of the deceased - PW 4 through telephone. PW3 has categorically stated that the accused had hacked the deceased with an axe and ran away and he found the axe at the scene of occurrence. We have no reason to disbelieve the evidence of PW 3. PW 3 also had no reason to implicate the accused in this crime. B
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10. PWs 8 and 9 stated that the accused had indicated to them that the deceased was having illicit intimacy with his H

A wife. It was stated that the accused had informed them that he was even prepared to go to jail by beating the deceased, if the deceased had not stopped that illicit intimacy. PW 13, the doctor, who conducted the post-mortem, opined that the deceased died due to shock and the head injury. PW 15, the
 B Investigating Officer, stated that he had visited the scene of offence at about 12.45 am on 14.6.2001 and seized the blood stained earth, material objects and conducted the inquest over the dead body of the deceased and sent the dead body for post-mortem examination. PW 14, Sub-Inspector of Police,
 C stated that he had registered the crime No. 34 of 2001 and issued the FIR. Ex.P1 report clearly discloses the commission of the offence by the accused. There is no necessity of the detailed narration of the incident, as to how PWs2 and 3 saw it, in the FIR. PWs 2 and 3 after all are not the authors of the
 D complaint. Their statements cannot be disbelieved on the ground that their finding the accused on the scene of occurrence with an axe, has not found any place in the FIR.

11. This Court in *Surjit Singh @ Gurmit Singh v. State of Punjab* 1993 Supp. (1) SCC 208, held that the FIR is not a
 E substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of the Act. It is not the requirement of the law that the minutest details be recorded in the FIR lodged immediately after the
 F occurrence. Reference may also be made to the judgment of this Court in *Ravi Kumar v. State of Punjab* (2005) 9 SCC 315.

12. Learned counsel appearing for the appellant submitted that the prosecution had miserably failed to prove the alleged
 G motive for the commission of the offence. In Ex.P1, it was mentioned that the accused killed the deceased in view of the illicit intimacy of his wife with the deceased. Prior to the commission of the offence, about one month back, the accused had informed PW 5 on the illicit affairs of his wife with the
 H deceased and asked him to advise the deceased to deter from

that. PW 5 along with PWs 8 and 9 would indicate that the accused had carried the feeling that the deceased was having some illicit relationship with his wife. Assuming that the prosecution has not succeeded in establishing the motive for the commission of the offence, when there is un-impeachable oral evidence, the motive would be irrelevant.

13. In *Baitullah and Another v. State of U.P.* (1998) 1 SCC 509, this Court has taken the view that where a murderous assault has been established by clear ocular evidence, the motive pales into insignificance. In *State of Himachal Pradesh v. Jeet Singh* (1999) 4 SCC 370, this Court held that it is a sound principle to remember that every criminal act was done with a motive, but its corollary is not that no criminal offence would have been committed if the prosecution has filed to prove the precise motive of the accused to commit it and the prosecution succeeded in showing the possibility of some ire for the accused towards the victim. This Court held that it is also impossible for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. Reference may also be made to the judgments of this Court in *Nathuni Yadav and Another v. State of Bihar and Another* (1998) 2 SCC 238.

14. The direct evidence of illicit intimacy cannot always be expected. But, taken into consideration of the evidence of PW 5 and PWs 8 and 9, the prosecution could establish that the accused had a grudge or ill-feeling towards the deceased that led him to commit the murder. PWs 2 and 3 found the accused with MO6 (axe) which was used for the commission of the offence. PWs 5 and 9 also stated that in their evidence that they found the axe near the cot at the scene of the offence. The prosecution also proved that MO6 axe was seized from the scene of occurrence by PW 15, in the presence of PW 1 and 11. MO6 axe was also sent to R.F.S.L., Vijayawada for analysis and from Ex.P18 report dated 4.8.2001, it was observed that the blood of human origin was detected on MO6 axe. Therefore,

A the contention raised by the learned counsel appearing for the appellant accused that MO6 was planted, cannot be accepted.

B 15. We are also not impressed by the contention raised on behalf of the appellant that there was delay in informing the incident to the police. The incident had happened at the midnight of 13.6.2001. The deceased was taken to the private hospital by PWs 3 and 5 in a tractor of PW 7, where he was declared dead. The dead body of the deceased was brought back to the house at about 3.00 am. PW 4, father of the deceased, then informed the death of the deceased to PW 1, the Village Administrative Officer, at about 8.00 am on 14.6.2001. PW 14, Sub-Inspector of Police, stated that he had registered the complaint after 10 hours from the time of the incident, i.e. in the morning of 14.6.2001. Learned counsel for the appellant, as we have already indicated, pointed out that the delay in reporting the incident to the police cause serious suspicion on the evidence of PWs 2 and 3. It was pointed out that immediately after the alleged incident, PW 3 had the occasion to pass through Martur village, but had not reported the same to the police. The delay in registering the FIR, according to the learned counsel, weakens the prosecution case. We find no basis in the contention raised by the counsel.

F 16. This Court in *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73 held that the delay in filing the FIR ipso facto could not go to show that the case against the accused is false. This Court in *Jahoor and Others v. State of U.P.* 1999 Supp (1) SCC 372, *Tara Singh & Others v. State of Punjab* 1991 Supp (1) SCC 536 and *Jamna v. State of U.P.* 1994 Supp (1) SCC 185, has held that where there is a delay in making the FIR, the Court is to look at the causes for it and if such causes are not contributable to any effort to concoct a version, no consequence shall be attached to the mere delay in lodging the FIR. In *Tara Singh* (supra), this Court held as follows:

H "It is well-settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case.

Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report....." A B

The view expressed in the above mentioned judgments was later followed by this Court in *Ravinder Kumar and Another v. State of Punjab* (2001) 7 SCC 690. C

17. We are of the view that the principle laid down by this Court in the above mentioned judgments is squarely applicable to the facts of the present case. Not only that there was no inordinate delay in informing the incident to the police, there has been sufficient explanation for the delay of 10 hours in intimating the offence to the police. We, therefore, find no basis in the contention raised by the learned counsel appearing for the appellant. D E

18. In the facts and circumstances of the case, we are of the view that the Sessions Court and the High Court have correctly come to the conclusion that the prosecution has succeeded in establishing the guilt of the accused beyond all reasonable doubt. F

19. The appeal, therefore, lacks in merits and accordingly dismissed. G

B.B.B.

Appeal dismissed.