

A SUDHAKAR @ SUDHARASAN

v.

STATE REP. BY THE INSPECTOR OF POLICE, SRIRANGAM
POLICE STATION, TRICHY, TAMIL NADU

B (Criminal Appeal No. 381 of 2018)

MARCH 12, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

C *Penal Code, 1860 – s.302 – Prosecution case that appellant was found strangulating the neck of his grandmother with his hands – P.W-1(son-in-law of deceased), who was sleeping in the adjoining room, upon hearing the screams of the deceased, rushed to her and witnessed the crime being committed – Appellant then took money bag from the possession of the deceased and fled away from the spot – Accused was arrested next day at bus stand, in presence of*

D *PWs 11 and 12 – Appellant-accused convicted by the trial Court and conviction affirmed by the High Court – On appeal, held: Conviction by the Courts below suffers from patent error of law – PWs 11 and 12 in their examination-in-chief denied the prosecution story about their presence at the time of arrest and seizure of material*

E *objects from the possession of the accused and they turned hostile – Prosecution case rested on evidences of PW 1 and his wife (PW 5) who were closely related to the accused-appellant – The relations between accused-appellant and PWs 1 & 5 were strained over property issues and they were in inimical terms – As the prosecution has relied upon the evidence of interested witnesses, the Court has*

F *to be cautious while analyzing such evidence – Other than these witnesses, there were no independent witnesses to support the case of prosecution – Nothing on record to support the version of PWs 1 & 5 – It was on record that when the deceased was brought to the hospital, in the accident register, it was written as ‘history of fall’ –*

G *According to prosecution blood came out from the mouth and nose of the deceased, but there appears no seizure of bloodstained clothes of the deceased and chemical analysis – There was inconsistency in evidence by the alleged eyewitnesses as well as investigation agency – Thus, there exists reasonable doubt in instant case as the case of prosecution is un-supported by independent witnesses,*

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ridden with contradictions, good motive for false prosecution and filled with suspicious circumstances. A

Allowing the appeal, the Court

HELD: 1. The whole basis for the Courts below to convict the accused appears to be the version of the prosecution that the accused was arrested next day at about 11 a.m. at bus stand, in presence of PWs 11 and 12, and brushed aside the plea of alibi presented by the accused with due support by the evidence of DW1. It is worthwhile to note that both of these witnesses (PWs 11 & 12) in their examination-in-chief denied the prosecution story about their presence at the time of arrest and seizure of material objects from the possession of the accused and they turned hostile. This fact casts serious doubts on the veracity of prosecution story about the arrest of the accused. [Para 14] [619-C-D] B C

2. Admittedly, at the time of alleged incidence, PW 5 (wife of PW1) and PW 6 (son of PWs 1 & 5) were not present near the alleged scene of offence. As regards the evidences of independent witnesses (PWs 2, 3 and 4), who were residents of the same street as that of the deceased and who were examined as ocular witnesses, PW 2 (tenant of PW 5) turned hostile and did not support the prosecution case. Another shortfall in the prosecution case is that PW1 deposed that he gave oral complaint to police, but a contrary statement was put forth by PW15—I.O. stating that he got a written complaint from PW1. [Para 15] [619-C-D, G] D E

3.1 From the stated facts, it emerges that the entire prosecution case rests on the evidences of PWs 1 and 5 who are closely related to the accused—appellant. The accused is none other than the son of PW 5's brother and PW 1 is the husband of PW5 and PW6 is the son of PWs 1 & 5. Clearly, the relations between the accused—appellant and PWs 1 & 5 were strained over property issues and they were in inimical terms. Apparently, there was also a civil suit pending between them for partition of properties. [Para 16] [619-H; 620-A-B] F G

3.2 It is settled law that there cannot be any hard and fast rule that the evidence of interested witness cannot be taken into consideration and they cannot be termed as witnesses. But, the only burden that would be cast upon the Courts in those cases is H

A that the Courts have to be cautious while evaluating the evidence to exclude the possibility of false implication. Relationship can never be a factor to affect the credibility of the witness as it is always not possible to get an independent witness. [Para 17] [620-E]

B 3.3 Then, next comes the question ‘what is the difference between a related witness and an interested witness?’. The plea of “interested witness”, “related witness” has been succinctly explained by this Court that “related” is not equivalent to “interested”. The 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. C In this case at hand PW 1 and 5 were not only related witness, but also ‘interested witness’ as they had pecuniary interest in getting the accused petitioner punished. As the prosecution has relied upon the evidence of interested witnesses, it would be D prudent in the facts and circumstances of this case to be cautious while analyzing such evidence. Other than these witnesses, there are no independent witnesses available to support the case of the prosecution. [Para 18] [620-F-H]

E 4. There is nothing on record to support the version of PWs 1 & 5 that on earlier occasions also and particularly on the date of incident, the accused quarreled with his grandmother demanding money and to settle the house in his favor. Further, it is on record that when the deceased was brought to the hospital, in the Accident Register, it was written as ‘history of fall’. F According to the prosecution’s case, blood came out from the mouth and nose of the deceased, but there appears no seizure of bloodstained clothes of the deceased and chemical analysis. Thus, the inconsistent evidence by the alleged eyewitnesses as well as investigation agency would cause dent to the edifice on which the prosecution case is built, and it adversely affects the G substratum of the prosecution case. [Para 19] [621-A-C]

H 5. There exists reasonable doubt in this case as the case of prosecution is un-supported by independent witnesses, ridden with contradictions, good motive for false prosecution and filled with suspicious circumstances. Further, there is not only insufficiency of evidence but also lack of credibility on the

trustworthiness of PWs 1 & 5 which culminated into disproving the prosecution case and alleged guilt of the accused. The prosecution has, therefore, failed to establish the guilt of the accused-appellant beyond reasonable doubt by adducing cogent evidence. [Para 22] [622-B-C]

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Sarwan Singh v. State of Punjab (1976) 4 SCC 369;
State of U.P. v. Kishanpal and Ors. (2008) 16 SCC 73 :
[2008] 11 SCR 1048; Latesh v. State of Maharashtra
2018 (3) SCC 66 – referred to.

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Case Law Reference

(1976) 4 SCC 369	referred to	Para 17
[2008] 11 SCR 1048	referred to	Para 18
(2018) 3 SCC 66	referred to	Para 21

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 381 of 2018.

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From the impugned Judgment and Final Order dated 23.01.2015 passed by the Madurai Bench of Madras High Court in Criminal Appeal No.(MD) No.298 of 2013.

Thomas Franklin Caesar, S. Gowthaman, Ms. M. Venmani, Ms. S. Amali, Advs. for the Appellant.

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M. Yogesh Kanna, Ms. Sujatha Bagadhi, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

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2. This appeal has been preferred against the judgment dated 23rd January, 2015 passed by the Madras High Court, Bench at Madurai in Criminal Appeal (MD) No. 298 of 2013 whereby the High Court concurred with the judgment of the trial court and dismissed the appeal preferred by the appellant—accused against his conviction under Section 302 IPC.

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3. Facts of the case in brief, as advanced by the prosecution, are that the appellant herein is a habitual drunkard and used to live opposite to his grandmother's house and always indulged in quarreling with her demanding money. The incident has taken place on 17th January, 2013 at about 6.30 p.m. The appellant was found strangulating the neck of his grandmother, namely, Mariyayee (deceased) with his hands. One

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- A Jayaraj—PW1 (son-in-law of the deceased), who was sleeping in the adjoining room, upon hearing the screams of the deceased, rushed to her and witnessed the crime being committed by the accused on his grandmother. The appellant then took *surukupai* (money bag) from the possession of the deceased and fled away from the spot.
- B 4. Jayaraj—(PW 1) then hired an auto and took his mother-in-law to ABC hospital while informing about the incident to his wife Maruthayee (PW5) over phone, PW5 in turn also reached the hospital. The patient was admitted in the hospital at 7.30 p.m. and Dr. Mohammed Ghouse Khan (PW8) examined her and found that she was conscious but restless.
- C However, Mariyayee had passed away at 7.55 p.m. Jayaraj (PW 1) lodged complaint at Srirangam Police Station at about 11.30 p.m. and basing on the same, Crime No. 22 of 2013 was registered against the appellant. PW15—Inspector of Police (Balusamy) sent the FIR (Ext.P12) to Court and inspected the place of occurrence. Subsequently, other formalities such as preparation of observation mahazar (Ext. P2), drawing of rough sketch (Ext. P13), holding of inquest were carried on and the body of the deceased was sent for postmortem. Meanwhile, the accused—appellant was taken into custody and after recording his confessional statement, police recovered *surukupai* (money bag) from his possession (M.O. 1).
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- E 5. Postmortem on the dead body of deceased Mariyayee was conducted by Dr. RVS Renuga Devi (PW 9) who found linear abrasions of varying lengths and contusion on the front of neck, fracture of thyroid cartilage and tracheal rings, bruising of anterior chest wall, fracture of left collar bone and manubrium stemi transversely at the level of 4th rib attachment with surrounding area bruising. Doctor expressed her opinion
- F that the deceased appears to have died of compression of neck and chest wound.
- G 6. The appellant—accused denied the charge of committing the offence and claimed to be tried. In order to bring home the guilt of the accused, prosecution has examined as many as 15 witnesses and marked 16 exhibits. While so, the accused in his defence examined his mother-in-law, Mala as DW1 and marked no documents. There were however two material objects, one is the *surukupai* (money bag) and the other is an amount of Rs.140/-, both have allegedly been recovered from the possession of the accused.
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7. The trial court relying upon the evidences of prosecution witnesses, particularly PWs 1 and 5, came to the conclusion that often the accused used to quarrel with the deceased for fulfilling his demands of money and had the motive to commit the offence. In pursuance thereof, the accused came to the house of the deceased and strangulated her neck and then pushed her down, hence the deceased suffered asphyxia and injuries on her chest wall and ribs. It further held that medical evidence on record clearly establishes that the deceased had died due to compression of neck and chest wounds. Therefore, the trial Court held that the trivial contradictions in the evidence of the witnesses will not affect the prosecution case and the appellant—accused was guilty of the offence of murder. The trial Court accordingly convicted the accused under Section 302, IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to further suffer rigorous imprisonment for a period of six months.

8. The aggrieved appellant approached the High Court in appeal which came to be dismissed with the observation that the conviction and sentence imposed by the learned trial judge is in consonance with the penal provisions and does not suffer from any infirmity. Hence, the accused is before us by way of this appeal.

9. We have heard learned counsel for the parties and perused the material on record.

10. Learned counsel appearing for the accused—appellant emphatically contended that the courts below have erred in convicting the appellant even though prosecution case was full of material irregularities and inconsistent depositions by the witnesses. The counsel pointed out that the Courts below committed manifest error while disbelieving the defence of alibi of the appellant that at the relevant time, the accused was not there at his grandmother's house but he was in his mother-in-law's house and police took him for enquiry from there on 17.1.2013 at 11 pm. The counsel submitted that the prosecution has not successfully established the motive part also. But the Courts below laid basis on exaggerated versions of prosecution witnesses and convicted the appellant. All the prosecution witnesses, particularly PW 1 and PW 5, are interested witnesses as they had developed grudge on the family of the appellant in connection with sharing of properties and they want to get rid of him as they intend to grab the property of appellant. With

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A that view in mind, PWs 1 and 5 implicated the accused in the offence which would disentitle him to inherit the joint family property.

11. It was further argued that there was no independent witness to the alleged crime and there was no satisfactory explanation for the delay in lodging complaint under Ext. P.1 and the delay in FIR reaching to the Judicial Magistrate. PWs 2, 3, 4 who were said to be the eyewitnesses, did not support the case of prosecution. It is also contended by the learned counsel that it was evidently represented by PW5—daughter of the deceased at the hospital that her mother (deceased) had fallen down in the house and therefore she was suffering from breathlessness, the said statement is duly authenticated with the Accident Register (Ext. P3) where it is mentioned as ‘history of fall’. But later on before Court, PW5 denied of having said so and improved her statement thereby implicating the appellant in the crime. More stress has been laid on the aspect that as per postmortem report, on the body of the deceased, there were fractures over the rib and left collar bone as well as over manubrium sterni, which does not support the case of strangulation but supports the case of fall as stated by PW5 to the Doctor. Concluding his arguments, learned counsel submitted that despite all the discrepancies in the prosecution case, the Courts below went ahead and convicted the appellant and the judgment deserves to be set aside by this Court.

E 12. While advancing his arguments, learned counsel appearing for the State submitted that no case is made out by the appellant seeking interference of this Court while both the Courts below concurrently found him guilty. According to him, the accused, being a habitual drunkard, often used to quarrel with his grandmother (deceased) for money and for transfer of property. On the day of incident also, the accused picked up a quarrel with the deceased at about 11 am and PW1 sent him away peacefully. But in the evening, while PW1 was asleep in the house, the accused again entered and committed the offence. The trial Court and High Court had rightly relied upon the consistent and categorical evidence of PW1, who happened to be the eyewitness to the incident, coupled with the corroboration of medical evidence, and by way of a reasoned order, convicted the accused. The recovery of *surukupai* (money bag) from the possession of the accused substantiates the commission of crime and the case of the prosecution. Though the accused tried to put forward the defence of alibi through DW1, the defence could not succeed in its effort and they did not put a single query or suggestion to the

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Investigating Officer in their endeavor to ascertain that the accused was picked up by the police from the house of DW1 and to falsify the prosecution case that the accused was arrested from the bus stand. A

13. On a careful consideration of the matter in the light of submissions made on either side and after perusing the material available on record, the issue that falls for consideration is “whether both the Courts below were right in convicting the accused for the offence punishable under Section 302, IPC.” B

14. The whole basis for the Courts below to convict the accused appears to be the version of the prosecution that the accused was arrested on 18.1.2013 at about 11 a.m. at bus stand, in presence of PWs 11 and 12, and brushed aside the plea of alibi presented by the accused with due support by the evidence of DW1. It is worthwhile to note that both of these witnesses (PWs 11 & 12) in their examination-in-chief denied the prosecution story about their presence at the time of arrest and seizure of material objects from the possession of the accused and they turned hostile. This fact casts serious doubts on the veracity of prosecution story about the arrest of the accused. C
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15. Admittedly, at the time of alleged incidence, PW 5 (wife of PW1) and PW 6 (son of PWs 1 & 5) were not present near the alleged scene of offence. As regards the evidences of independent witnesses (PWs 2, 3 and 4), who were residents of the same street as that of the deceased and who were examined as ocular witnesses, PW 2 (tenant of PW 5) turned hostile and did not support the prosecution case. He deposed that on 17.1.2013 at 7 pm when he found some crowd in front of the house of deceased he rushed there and found the deceased in unconscious condition. Then, he along with PWs 3 and 4 took the deceased to Srirangam Government Hospital and informed the same to PWs 1 & 5, they asked them to bring the deceased to ABC Hospital where PWs 1 & 5 joined them later on. In his cross examination, he stated that PW 1 was not present in Srirangam on the date of incident. PWs 3 and 4 also turned hostile and similar statements were made by them also. Another shortfall in the prosecution case is that PW1 deposed that he gave oral complaint to police, but a contrary statement was put forth by PW15—I.O. stating that he got a written complaint from PW1. E
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16. From the above stated facts, it emerges that the entire prosecution case rests on the evidences of PWs 1 and 5 who are closely H

A related to the accused—appellant. The accused is none other than the son of PW 5’s brother and PW 1 is the husband of PW5 and PW6 is the son of PWs 1 & 5. Clearly, the relations between the accused—appellant and PWs 1 & 5 were strained over property issues and they were in inimical terms. Apparently, there was also a civil suit pending between them for partition of properties.

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17. It would be appropriate to have a look at the legal position with regard to the evidence of related and interested witnesses. In *Sarwan Singh v. State of Punjab*, (1976 (4) SCC 369), para 10, this Court observed thus:

C “..... 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 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
D corroboration.”

E It is settled law that there cannot be any hard and fast rule that the evidence of interested witness cannot be taken into consideration and they cannot be termed as witnesses. But, the only burden that would be cast upon the Courts in those cases is that the Courts have to be cautious while evaluating the evidence to exclude the possibility of false implication. Relationship can never be a factor to affect the credibility of the witness as it is always not possible to get an independent witness.

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18. Then, next comes the question ‘what is the difference between a related witness and an interested witness?’. The plea of “interested witness”, “related witness” has been succinctly explained by this Court that “related” is not equivalent to “interested”. The 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. In this case at hand PW 1 and 5 were not only related witness, but also ‘interested witness’ as they had pecuniary interest in getting the accused petitioner punished. [*refer State of U.P. v. Kishanpal and Ors.*, (2008) 16 SCC 73]. As the prosecution has relied upon the evidence of interested witnesses, it would be prudent in the facts and circumstances of this case to be cautious while analyzing such evidence. It may be noted that other than these witnesses, there are no independent witnesses available to support the case of the prosecution.

19. Now, it would be appropriate to consider whether the Courts below exercised the judicial discretion in evaluating the evidence of PW1 and PW5 while convicting the accused. It may be noted that there is nothing on record to support the version of PWs 1 & 5 that on earlier occasions also and particularly on the date of incident, the accused quarreled with his grandmother demanding money and to settle the house in his favor. Further, it is on record that when the deceased was brought to the hospital, in the Accident Register, it was written as 'history of fall'. According to the prosecution's case, blood came out from the mouth and nose of the deceased, but there appears no seizure of bloodstained clothes of the deceased and chemical analysis. Thus, the inconsistent evidence by the alleged eyewitnesses as well as investigation agency would cause dent to the edifice on which the prosecution case is built, and it adversely affects the substratum of the prosecution case.

20. We further find, to a certain extent, material infirmities, irregularities and contradictions in the prosecution case as also in the evidence of prosecution witnesses including the deposition of PWs 1 & 5, who are material witnesses. PW 1 in his cross examination categorically stated that his wife (PW 5) has filed a suit for partition against the accused and his family members whereas PW 5 in her cross examination denied the same. Likewise, there are contradictory statements of witnesses, primarily to the aspect of happening of incident, taking the victim to the hospital, the presence of PW1 at the time of alleged incident, detaining the accused from bus stand or from his mother-in-law's house, recovery of material objects from the possession of accused and lodging of complaint by PW1 etc, and the whole story appears to be an utterly incredible one. More so, there was no explanation forthcoming from the prosecution side on the questions raised by the defense that soon after reaching the ABC hospital with victim, how can the PWs 1 & 5 directly approach Dr. Mohammed Ghouse Khan (PW8) without going to Emergency Ward and why the Doctors at ABC hospital did not inform police when it was a medico legal case. Both the Courts below have simply noted that the variations and contradictory statements are not material in proving the guilt of the accused. We feel that the reasoning given by the Courts below is *ex facie* illegal.

21. This Court in *Latesh V. State of Maharashtra* [Criminal Appeal No. 1301 of 2015, decided on January 30, 2018] has explained that the reasonable doubt in a lucid manner as a mean between excessive caution

A and excessive indifference to a doubt. Moreover, it has been explained that reasonable doubt should be a practical one and not an illusory hypothesis.

22. In view of the above discussion, we are of the view that there exists reasonable doubt in this case as the case of prosecution is unsupported by independent witnesses, ridden with contradictions, good motive for false prosecution and filled with suspicious circumstances. Further we are of the considered opinion that there is not only insufficiency of evidence but also lack of credibility on the trustworthiness of PWs 1 & 5 which culminated into disproving the prosecution case and alleged guilt of the accused. The prosecution has, therefore, failed to establish the guilt of the accused-appellant beyond reasonable doubt by adducing cogent evidence. We are satisfied that the Courts below completely misdirected themselves and the conviction imposed upon the accused by the trial Court and confirmed by the High Court suffers from patent error of law and perversity of approach and deserves to be set aside.

23. Resultantly, the appeal is allowed and the impugned judgment passed by the High Court is set aside. The appellant is stated to be in jail. He shall be set free forthwith unless required in any other case. Pending applications, if any, shall also stand disposed of.

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Ankit Gyan

Appeal allowed.