S. Sudershan Reddy & Ors vs The State Of Andhra Pradesh on 20 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2716, 2006 (10) SCC 163, 2006 AIR SCW 3680, 2006 (3) SCC(CRI) 503, 2006 (7) SCALE 244, 2006 ALL MR(CRI) 2695, (2006) 44 ALLINDCAS 51 (SC), 2006 (8) SRJ 472, (2006) 6 SUPREME 1, (2006) 3 RAJ CRI C 531, (2006) 7 SCALE 244, (2006) 56 ALLCRIC 229, (2006) 4 EASTCRIC 40, (2006) 35 OCR 121, (2006) 3 RECCRIR 764, (2006) 3 CURCRIR 197, (2006) 3 CHANDCRIC 113, (2006) 4 ALLCRILR 346, (2006) 3 CRIMES 176, (2006) 2 ORISSA LR 528, (2007) SC CR R 198, 2006 CRILR(SC MAH GUJ) 713, 2006 CRILR(SC&MP) 713, (2005) 4 PAT LJR 219, (2006) 37 ALLINDCAS 796 (PAT), (2006) 2 CRIMES 548, 2007 (1) ANDHLT(CRI) 245 SC

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Bench: Arijit Pasayat, R.V. Raveendran

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           CASE NO.:
Appeal (crl.)  639 of 2005

PETITIONER:
S. Sudershan Reddy & Ors

RESPONDENT:
The State of Andhra Pradesh

DATE OF JUDGMENT: 20/07/2006

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Andhra Pradesh High Court upholding the conviction of the four appellants under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life as awarded by learned Principal Sessions Judge, Kurnool.

Accusations which led to trial of the appellants was that on 27.4.1999 at about 8.30 p.m. they caused homicidal death of one Khaja Saheb (hereinafter referred to as the 'Deceased') by hacking and stabbing with sickles and knives.

Prosecution version in a nutshell is as follows:

> On 27.4.1999, sometime prior to the occurrence, Khaja Saheb (the deceased) S. Venkateswara Reddy, G. Thirumalesh Gowd and T. Sreenivaslu (PWs. 1, 2 and 3) were at a place called "Ramesh Hotel" near the Silver Jubilee College of Kurnool Town. Thereafter they started on 2 two wheelers i.e. the deceased and PW1 on the first vehicle, followed by PWs. 2 and 3 on another vehicle. The deceased was driving the first of the above mentioned two wheelers. PW1 was the pillion rider. When the deceased and PW1 reached near the railway gate located on their way, an auto-rickshaw overtook them. In that process, the deceased lost the control of the vehicle and they fell down. According to Ex.P1 complaint, lodged by PW1 which was received by Sub-inspector (PW8) at about 10.30 AM on the very same night, all the four appellants herein got down from the above mentioned auto rickshaw, attacked the deceased. As a result of the said attack, the deceased breathed his last on the spot. In fact, from the evidence of Dr. M.S. R.K. Prasad, the doctor (PW10) who conducted the post- mortem over the dead body of the deceased, there were number of cut and stab injuries on the body classified under ten heads. Immediately, after the incident, PW1 went to the residence of the deceased, informed the kith and kin of the deceased around 8.45 P.M. Afterwards, PW1 went to the police station and lodged Ex.P1 complaint.
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> PW8 the Sub-Inspector of Police who received Ex.P1 at about 10.30 P.M., registered Crime No. 113 of 1999 under Section 302 IPC. He also informed the Inspector of Police, (PW9) Kurnool Town at that relevant point of time. On receipt of the information, PW9 went to the scene of offence, posted guard at the scene of offence and on the next morning i.e., 28.4.1999, PW9 secured the presence of witnesses PWs.1, 2 Sayed Bade Bi (PW5) and B. Hussainappa (PW6) commenced the inquest around 7.30 A.M. He seized MOs. 1 to 3 the apparels of the deceased and after conclusion of the inquest, the dead body of the deceased was sent for postmortem examination. On 8.5.1999 he arrested all the appellants at a place called "Papaji Dabha". During the course of interrogation the accused are said to have made a confessional statement, which led to the recovery of M.Os. 7 to 10 under the cover of Ex.P.14 Mahazir. The charge sheet was filed by the successor in the office of PW 9.

In order to establish the guilt of the appellants, the prosecution examined 10 witnesses, proved 15 documents and exhibited 10 M.Os. Of the 10 witnesses examined, PWs.1, 2, 3 and 4 were cited as eye witnesses. PW1 did not support the prosecution case in full. Therefore, the prosecution cross-examined him. PW2 did not support the prosecution case at all. Mala Venkateswarulu the (PW4) auto rickshaw driver though initially supported the prosecution case in full, made a volte-face and totally resiled from his earlier version when he was recalled for further cross-examination by the defence a month after his initial examination. He was at that stage cross-examined by the prosecution.

Similarly, T. Krishna (PW7) who was the panch witness for Ex.P 13 i.e., arrest Mahazir of the appellant accused, did not support the prosecution case. The learned Sessions Judge on elaborate consideration of the evidence brought on record, came to the conclusion that the appellants accused were guilty for the offence with which they stood charged and convicted and sentenced each to suffer life imprisonment.

Questioning correctness of the decision rendered by the trial court, an appeal was preferred before the Andhra Pradesh High Court by the accused persons. Primary stand of the appellants before the High Court was that PWs. 1, 2, 4 & 7 did not support the prosecution version and departed from the statement purportedly given during investigation; and that only on the basis of the evidence of PW 3, the conviction should not have been recorded. Though PW 3 claimed to be an eye witness to the occurrence, his conduct was very abnormal and unusual as he did not inform the police and did not also tell about the incident to any other person. Though he claimed to be present at the time of inquest, his statement was not even recorded at the time of inquest. Furthermore, being closely related to the deceased his evidence should not have been acted upon without corroboration.

On the contrary, stand of the State was that in the Ex. P1, complaint which was lodged immediately after the occurrence, name of PW3 as an eye witness was mentioned. Though PWs 1, 2 and 4 did not support the prosecution version, on a close reading of their evidence it is clear that the version of PW 3 is established. Further PW4 who was examined on 1.11.2001 fully supported the prosecution version. He was cross-examined by the defence. Strangely after about the month of the said cross examination, an application was filed without indicating any reason to recall him for further cross examination. The trial court without assigning any reason permitted further cross examination in which he substantially departed from what he had stated earlier.

The High Court after analyzing the evidence in detail concurred with the findings of the trial court and upheld with the conviction and sentence.

In support of the appeal learned counsel for the appellants submitted that as the so called eye witnesses PWs. 1,2 and 4 did not support the prosecution version, the trial court and the High Court should have held that it would be extremely hazardous to rely on the uncorroborated testimony of PW 3 who was closely related to the deceased. The source of light for identification of the accused, was not indicated in the FIR. For the first time the witness PW3 indicated the source of light for identification. Therefore, the trial court and the High Court should not have held the appellants guilty. In response, learned counsel for the respondent-State submitted that the trial court and the High Court have analysed the evidence in great detail and also considering the contention of the accused persons that PW 3 was related to the deceased, made an elaborate analysis of the evidence and found PW3 to be a truthful witness. Therefore, the conviction cannot be faulted. Additionally, the plea relating to absence of the source of light in the FIR was not pleaded before the Courts below. In any event FIR was not required to indicate the minutest details. Therefore, it was submitted the appeal deserves to be dismissed.

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.

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

> "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."

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.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in 'Rameshwar v. State of 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."

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

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is

> partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW3 to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali v. The State of Uttar Pradesh (AIR 1957 SC 366).(Also see: Sucha Singh and Anr. v. State of Punjab (2003 (6) JT SC 348).

Learned counsel for the appellants submitted that the non-mention about the source of light in the FIR is clearly fatal to the prosecution case. Strong reliance is placed on the decisions in Bollauaram Pedda Narsi Reddy and Ors. v. State of Andhra Pradesh (1991(3) SCC 434). As has rightly pointed out by the learned counsel for the Respondent State such a plea was not taken before either the trial court or the High Court. It is interesting that in the cross examination of the witnesses, the defence has suggested that the light was dim because the scooter had practically stopped moving and there was only idling of the engine. PW 2's evidence is categorical that he saw the attack in the light of the scooter head light. This was stated in the cross examination by the accused persons. Similarly PW 3 was asked as to whether he could tell the number of blows each accused gave. He answered in the affirmative. Indirect suggestion therefore was that though the blows were there, he could not tell the number. To say the least this is irresponsible cross examination. Though for that alone the prosecution case does not get strengthened yet this is a factor which can be taken note of. Non mention in the FIR about the source of light is really non consequential. It is well settled that FIR is not an encyclopaedia of the facts concerning the crime merely because of minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR. Therefore mere absence of indication about the source of light does not in any way affect the prosecution version. Additionally the decision in Bollanaram's case (supra) is really of no assistance to the appellant. It is

apparent that the observation regarding the non-mention about the source of light in that case was by way of description of the factual scenario. It was noted by the court that victims were strangers to the accused. In that background the source of light was found to be of some importance.

In Nathuni Yadav and Others v. State of Bihar and Another. (1998(9) SCC 238) this Court observed that under what circumstances the lack of moon light or artificial light does not per se preclude identification of the assailants. It was noted as follows :-

> "Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the light then available, though meager, was enough for the assailants why should we think that the same light was not enough for the assailants why should we think that the same light was not enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focused their eyes on the faces of the intruders standing in front of them. What is sauce for the goose is sauce for the gander."

In the instant case, the time was about 7 P.M. in the evening in the month of April. The position was again reiterated in Bharasi and others v. State of M.P. (2002(7) SCC

239). It was inter alia noted as follows :

> "In relation to the identification of the accused in the darkness, the High Court has clearly stated that in the month of April, the sun sets at about 7.00 p.m. in the evening, the accused were known to the witnesses and could be identified even in faint darkness. Here again, the High Court has relied upon the decision of this Court in the case of Nathuni Yadav v. State of Bihar (1998 (9) SCC 238). The High Court has also noticed that the enmity between the deceased and the appellants was not disputed."

In Krishnan and Another v. State of Kerala (1996(10) SCC 508) it was observed as follows :

> "After giving our careful consideration to the facts and circumstances of the case and the evidence adduced, we do not find any reason to interfere with the well-reasoned judgment passed by the High Court in convicting appellant-2 Vijaykumar. So far as the contention of insufficient light is concerned, we may indicate that in an open field on a cloudless starry night, there was no difficulty in identifying the victim by the assailants because of existence of some light with which identification was possible. PW1 being a close relation of both the accused, there was no difficulty for PW 1 to identify them. The accused were also known to the other witness for which he could also identify them. So far as appellant- Vijaykumar is concerned, PW1 had physically prevented him from causing further injury on the deceased and there was a tussle between the two. Hence there was no difficulty for PW1 to identify Accused 2-Vijaykumar. His deposition gets corroboration from the deposition of PW3 who had seen Vijaykumar at the place of occurrence. PW3 had not seen Vijaykumar causing any injury on the deceased because by the time PW3 came near the place of the incident and noticed the incident, Vijaykumar had been prevented by PW1 and his knife had fallen on the ground."

Appeal is dismissed. Looked at from any angle, the judgment of the High Court does not suffer from any infirmity to warrant interference.