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KARULAL & ORS.

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 316 of 2011)

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OCTOBER 09, 2020

**[N. V. RAMANA, SURYA KANT AND
HRISHIKESH ROY, JJ.]**

Penal Code, 1860:

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ss. 148, 302/149 – Prosecution under – Three eye-witnesses – Conviction by Courts below – Appeal to Supreme Court – Held: Prosecution version is cogent and supported by consistent testimony of three eye-witnesses which is further corroborated by medical evidence – The facts that two of the eye-witnesses were related and that some of the witnesses turned hostile, will not affect the prosecution case.

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Evidence:

Related witness – Evidentiary value of – Held: Testimony of related witness, if found to be truthful, can be the basis of conviction.

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Criminal Trial:

Plea of false implication – On account of previous enmity – Held: Plea not sustainable – If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony.

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Dismissing the appeal, the Court

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HELD: 1. PW11 is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. The testimony of the related witness, if found to be truthful, can be the basis of conviction and there is every reason to believe that PW3 and PW12 were immediately present at the spot and identified the accused with various deadly weapons in their hands. [Paras 19 and 20][501-E-F; 502-B-C]

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Dalip Singh & Ors. v. State of Punjab AIR 1953 SC 364 : [1954] SCR 145; *State of Uttar Pradesh v. Samman Dass* (1972) 3 SCC 201 : [1972] 3 SCR 58; *Khurshid Ahmed v. State of Jammu and Kashmir* (2018) 7 SCC 429 : [2018] 6 SCR 1121 – relied on.

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2. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. In fact the history of bad blood gives a clear motive for the crime. Therefore this aspect does not aid the defence in the present matter. [Para 22][502-G]

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Sushil & Ors. v. State of U.P. (1995) 1 Suppl. SCC 363 : [1994] 5 Suppl. SCR 294 – relied on.

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3. There are enough material evidence and trustworthy testimonies which clearly support the case against the accused and the prosecution need not fail on the count that few of the witnesses had not supported the prosecution case and were declared to be hostile. Some witness may not support the prosecution story for their own reasons and in such situation, it is necessary for the Court to determine whether the other available evidence comprehensively proves the charge. In the present case, the prosecution version is cogent and supported by three eyewitnesses who have given a consistent account of the incident. Their testimonies are corroborated by the medical evidence. The Trial Court had elaborately discussed the evidence of both sides and came to a logical conclusion which inspires confidence. Therefore, the hostile witnesses will not affect the conviction of the appellants. The conviction of the appellants was rightly ordered and correctly upheld by the High Court. [Paras 23 and 24][503-G-H; 504-A-B]

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Case Law Reference

[1954] SCR 145	relied on	Para 18
[1972] 3 SCR 58	relied on	Para 19
[2018] 6 SCR 1121	relied on	Para 20
[1994] 5 Suppl. SCR 294	relied on	Para 21

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 316 of 2011.

From the Judgment and Order dated 23.06.2009 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 1637 of 1999.

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A Ms. Ankita Chaudhary, Dy.AG, T. Mahipal, Arjun Garg,
Ms. Shrutika Garg, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

B 1. This Appeal has been preferred by 5 accused, namely,
Karulal(A-5), Amra(A-6), Kachru(A-7), Suratram(A-8) and
Bhagirath(A-9). They challenge the judgment and order dated 23.6.2009
in Criminal Appeal No.1637 of 1999 whereby, the Madhya Pradesh
High Court, Indore Bench approved the conviction of the appellants
under Section 148, 302 read with Section 149 of the Indian Penal Code,
C 1860 (for short “the IPC”) and the resultant sentence for such conviction
ordered by the 2nd Additional Sessions Judge, Mandsaur (hereinafter
referred to as, “the learned Trial Court”).

2. The prosecution case is that at about 8-8.30AM Madhavji the
deceased, was present in his fields on 18.8.1993 and his son Bhawarlal
D (PW3) was grazing cattle nearby. Bhawarlal suddenly heard his father
cry out and saw that Amra, Kachru, Karu, Surtaram, Lalu (who is now
dead) and Bhagirath were attacking his father with axe, sword, farsa,
lathi, etc. On hearing commotion, Shyambai (PW 13), daughter of the
deceased, and Bhawarlal (PW9) son of Kaniram and Babulal (PW12),
E also reached the spot. On seeing them, the accused ran away. Bhawarlal
then arranged a bullock cart and took his injured father towards
Narayangarh. When they were crossing the houses of the accused,
Badambai, Munnabai, Ramibai, Sitabai and Veniram s/o Kachru, blocked
the cart and tried to prevent PW3 from lodging the report and they also
threatened to kill. But as other persons gathered around, the cart could
F proceed towards Narayangarh. On the way Madhavji died. Bhawarlal
and Babulal reached Narayangarh Police Station with the dead body
and lodged report at about 11.55 AM, within four hours of the incident.
The distance between the police station and the spot is about 8 Kilometres.

3. On completion of the investigation, charge sheet was filed
G against six accused under Sections 148, 302 read with Section 149 of
the IPC. Four others namely, Badambai, Munnabai, Ramibai and Sitabai
were charged under Section 506 IPC as they allegedly obstructed and
threatened the Informant, when they were proceeding with the injured
in the bullock cart.

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4. On evaluating the evidence against the 4 ladies charged under Section 506 IPC, the Trial judge held that this charge of obstruction and threat to kill the Informant, has not been proved and accordingly ordered for their acquittal. A

5. Then the evidence against the accused who were charged under Section 148, 302 read with Section 149 IPC was considered. To prove its case, the prosecution examined 15 witnesses of whom, PW 1 witnessed the arrest of the accused. Four others, i.e. Kishanlal(PW6), Prabhulal (PW7), Bhawarlal(PW9) s/o Kaniram and Nanuram(PW13) had turned hostile and did not support the case of the prosecution. Dr. P.N. Shrivastav (PW2) had performed the autopsy on the body of the deceased and noted the following nine injuries on his person: B C

(1) Incise wound 4" x 2" x 1/2" on left side of head with some pointed object.

(2) Compound fracture on right tumor and swelling around it which was hard and appeared to have been afflicted by some blunt object. D

(3) Compound fracture of right Radioulna bone caused by some blunt object.

(4) Compound fracture of left Tumor wound caused by a hard blunt object.

(5) Cut wound on upper left arm 2" x 1" x 1/2" left Brachial bone with cut with dried blood inflicted with some sharp object. E

(6) Compound fracture of left "Alna" with dried blood caused with some hard blunt object.

(7) Cut wound measuring 2x2x1" on right ankle with dried blood with some hard and blunt object resulting in cut veins. F

(8) Compound fracture or right Tibia and Fabula with some hard and blunt object.

(9) Cut wound 2 x 2-1/2" on left thigh with cut veins and cut Femoral Artery with dried blood caused with some hard and cutting object. G

6. According to the Doctor, the death was result of the bleeding following the injuries inflicted by hard, blunt and sharp-edged weapons and shock. He further opined during cross examination as under: H

A “Death of Madhav was caused as a cumulative effect of various
injuries caused to his body. Injuries to the Tibia, Fabula, Radius
and Alna and Humor bone shall not be fatal unless those are various
serious. No fracture was found in the injury listed at no.1. If any
person falls in the Nullah and suffers injuries from the rocks lying
B underneath and if his hands and feet come in contact with those
rocks, fracture to Fabula, Tibia, Radius and Alna are possible as a
result thereof.”

7. Bhawarlal (PW3), Babulal (PW11) and Shyamkalabai (PW12)
were the eyewitnesses of the incident. In his testimony, Bhanwar Lal,
son of the deceased, stated that on 18.8.1993 morning he was grazing
C his oxen in the nearby field when he heard the anguished cry of Madhavji
and while running towards his father, the PW3 saw Lala, Karu, Amra,
Kachru, Surat Ram and Bhagirath attacking his father. His sister Shyam
Kala (PW12) also reached the field. According to the (PW3), Lala and
Amra were armed with lathis, Surat Ram was holding knife, Kachru
D had a sword, Karuji was holding an axe having edges like Farsa, Bhagirath
too was holding an axe. The son rushed home and arranged a bullock
cart where the injured Madhavji was placed and then they proceeded to
the Narayangarh police station where he lodged the FIR. The PW3 also
mentioned that injured Madhavji had told him in the field itself, before he
went to fetch the bullock cart that Lala, Amru, Kachru, Surat Ram and
E Bhagirath had assaulted him.

8. Shyam Kala Bai (PW12) is the daughter of the deceased. While
heading towards field, she heard shrieks for help from her father who
was shouting that Lalaji’s sons were attacking him. She rushed to the
place of occurrence and saw her brother Bhanwar Lal (PW3) and Babu
F Lal(PW11) also reaching the spot. She saw her father in an injured
condition and the accused running away with various weapons in their
hand. She accompanied her injured father in the bullock cart with her
brother and stated that Madhavji expired on the way to Narayangarh.

9. On the day of the incident, Babu Lal (PW11) was walking
G towards his village after spending the night in the residence of the
deceased. In the morning he had tea with Madhavji who then went
ahead to his field. While proceeding a little later, the witness heard
Madhavji shouting that he was being killed. When the PW11 rushed to
the field, he noticed the accused attacking Madhavji with lethal arms.
H Madhavji had suffered a head injury from an axe blow, apart from other

injuries to his hands and feet. The witness placed the injured on the bullock cart driven by the son (PW3). The witness was following the bullock cart on his foot. Madhavji had expired while proceeding towards Narayangarh.

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10. On evaluating the evidence, the learned Trial Court found that the six accused (including Lala who died), being armed with lethal weapons, illegally assembled in order to attack the deceased Madhavji. While adverting to the eyewitness, PW3 and PW12 (children of the deceased), the Court highlighted the third eyewitness (PW11), who was not related. The trial Court also discussed the slight inconsistency in the evidence of PW3 and noted that his examination in chief and cross examination was conducted after long gap of one and a half years. His testimony as an eyewitness was however found to be consistent with the other two eyewitnesses.

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11. Similarly, the evidence of Shyam Kala Bai (PW12) was also found to be reliable by the learned trial Court as her presence at the spot of attack was confirmed by PW3 and PW11 (eyewitnesses) and they corroborated each other, on all material particulars.

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12. On the defence version of Ram Singh (DW1) and Mangi Lal (DW2), who projected that Madhavji suffered the injury on account of an accidental fall into the Nullah, the learned Trial Court noted that the DW2, who was the Chowkidar of the village, never visited the place of occurrence nor he reported about the alleged accident of Madhavji to the police which, he ought to have done in normal course of his duty as the village Chowkidar. Likewise the evidence of DW1 was found to be untrustworthy as he claimed to have accompanied Bhanwar Lal to the police station but in the related Exhibit there was no mention of DW1 accompanying the complainant Bhanwar Lal.

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13. On the possibility of the injuries being caused through a fall, the evidence of Dr. P.N.Shrivastav (PW2) was discussed vis-à-vis the testimony of the two DWs. The learned trial Judge noted that Dr. Shrivastav has merely accepted that injuries could be sustained through a fall from some height. But it was then specifically recorded by the learned judge that the Doctor never stated that the injuries were the result of accidental fall. In fact the defence never suggested that the injuries were not the result of the violent attack by the accused on the person of Madhavji. Accordingly, it was concluded that the injuries on

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- A the vital parts were inflicted by the accused in furtherance of their common objective.

14. As the accused pleaded false implication due to old enmity with the deceased's family, this aspect was considered in detail. On evaluation of the evidence of the eyewitnesses and the post mortem report, the defence plea of false implication was found to be untrue. It was then held that the accused persons had intentionally caused the fatal injuries on the deceased Madhavji and accordingly they were convicted under Section 302 read with 149 IPC and were sentenced to life imprisonment with fine of Rs.1,000/- each and in default to undergo six months further rigorous imprisonment. For the conviction under Section 148 IPC, the accused were sentenced to 3 years rigorous imprisonment with fine of Rs.3,000/- each. It may again be noted that amongst the six charged accused, Lala died during the trial.

15. The High Court in the appeal, rejected the plea of the appellants attempt to discredit the three eyewitnesses by observing that while it may be possible that the eyewitnesses may not have witnessed the actual assault but as they immediately reached the field on hearing the shrieks of Madhavji, their testimony on the accused being armed with lethal weapons and fleeing the spot soon after the assault, cannot be discarded. The High Court found consistency in the testimony of the eyewitnesses and noted that the injuries attributed by the eyewitnesses to the accused, is corroborated by the medical evidence. It was then concluded that there is no infirmity in the judgment of conviction rendered by the learned Trial Court and the appeal against conviction was accordingly dismissed.

16. Before us, the learned counsel for the appellant- Mr. T. Mahipal submits that the evidence of PW3 and PW12 should be discarded as they are the children of the deceased. He then submits that because of past enmity, the appellants were falsely implicated. The counsel also refers to few of the witnesses not supporting the prosecution version.

17. On the other hand, Ms. Ankita Chaudhary, the learned Dy. AG for the State of Madhya Pradesh argues that the evidence of the 3 eyewitnesses conclusively support the prosecution case. She then submits that medical evidence and injuries corroborate the oral testimonies. According to the learned counsel, bitter relationship of the two groups provide a clear motive for the accused to attack the victim.

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18. Let us now consider the law on evidentiary value of a related witness. Commenting on the aspect, Justice Vivian Bose in *Dalip Singh & Ors. Vs. State of Punjab*¹ rightly opined that;

“25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses 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 vs. The State of Rajasthan*. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.”

26. 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 the last to screen the real culprit and falsely implicate an innocent person.....”

19. It may further be noted that Babu Lal(PW11) is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in *State of Uttar Pradesh vs. Samman Dass*²

“23.....It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant.....”

20. Again in a later decision of this Court in *Khurshid Ahmed vs. State of Jammu and Kashmir*³ one of us, Justice N.V. Ramana on the issue of evidence of a related witness was justified in declaring that:

¹ AIR 1953 SC 364

² (1972) 3 SCC 201

³ (2018) 7 SCC 429

A “31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused (See *Harbans Kaur Vs. State of Haryana*)”

B The above precedents make it amply clear that the testimony of the related witness, if found to be truthful, can be the basis of conviction and we have every reason to believe that PW3 and PW12 were immediately present at the spot and identified the accused with various deadly weapons in their hands.

C 21. The learned counsel for the appellant next refers to the defence version of the injuries being caused through a fall on the Nullah and the old enmity being the cause for implicating the accused. On this issue, we may benefit by advertng to the observation of Justice *Faizan Uddin* in *Sushil & Ors. Vs. State of U.P.*⁴ where the learned Judge so correctly observed:

D “8.....It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable.....”

E 22. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. In fact the history of bad blood gives a clear motive for the crime. Therefore this aspect does not in our assessment, aid the defence in the present matter.

G 23. The appellant’s counsel also submitted that few of the witnesses had not supported the prosecution case and were declared to be hostile. But there are enough material evidence and trustworthy testimonies which clearly support the case against the accused and the

H ⁴ (1995) Suppl 1 SCC 363

prosecution need not fail on this count alone. Some witness may not support the prosecution story for their own reasons and in such situation, it is necessary for the Court to determine whether the other available evidence comprehensively proves the charge. In this case, it is seen that the prosecution version is cogent and supported by three eyewitnesses who have given a consistent account of the incident. Their testimonies are corroborated by the medical evidence. The learned Trial Judge had elaborately discussed the evidence of both sides and came to a logical conclusion which inspires confidence. We are therefore of the view that the hostile witnesses will not affect the conviction of the appellants.

24. Proceeding on the above basis and on careful examination of the manner in which the learned Trial Judge analysed the evidence and rendered his verdict, the conviction of the appellants according to our assessment, was rightly ordered and correctly upheld by the High Court. It is declared accordingly.

25. In the result, the appeal stands dismissed.