Syed Ibrahim vs State Of Andhra Pradesh on 27 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2908, 2006 (10) SCC 601, 2006 AIR SCW 4095, 2007 (1) CALCRILR 44, 2007 (1) SCC(CRI) 34, 2006 (7) SCALE 399, (2007) 2 CURCRIR 159, 2007 CALCRILR 1 44, (2006) 45 ALLINDCAS 678 (SC), 2006 (8) SRJ 592, 2006 CRILR(SC&MP) 678, (2006) 5 SUPREME 770, 2006 CRILR(SC MAH GUJ) 678, (2006) 4 EASTCRIC 36, (2007) 1 KER LJ 803, (2006) 3 RAJ CRI C 842, (2006) 3 RECCRIR 864, (2006) 3 CURCRIR 160, (2006) 7 SCALE 399, (2006) 4 ALLCRILR 646, (2006) 3 CRIMES 156, (2006) 3 CHANDCRIC 159, (2006) 35 OCR 165, 2007 (1) ALD(CRL) 225, 2007 (1) ANDHLT(CRI) 183 SC

Author: Arijit Pasayat

Bench: Lokeshwar Singh Panta, Arijit Pasayat

```
           CASE NO.:
Appeal (crl.)  798 of 2006

PETITIONER:
Syed Ibrahim

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 27/07/2006

BENCH:
ARIJIT PASASYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
```

J U D G M E N T (Arising Out of S.L.P. (Crl.) No. 2787 of 2005) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this Appeal is to the judgment rendered by a Division Bench of the Andhra Pradesh High Court upholding the conviction of the appellant for an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial court had found the appellant guilty of murdering his wife on 10.1.1994. The accused was sentenced to undergo imprisonment for life. Accused challenged the conviction and sentence by filing an appeal before the High Court which was numbered as Criminal Appeal No. 511 of 1997. Initially by order dated 30.4.1998 a Division Bench of the High Court allowed the Appeal. The respondent-State filed an appeal before this Court. Since the order passed by the High Court was practically unreasoned, without expressing any opinion on

merits, the judgment was set aside and the matter was remitted to the High Court for fresh disposal. The High Court by the impugned judgment dismissed the appeal confirming the order of the conviction and sentence passed by learned Session Judge, Guntur.

The background facts, as projected by prosecution during trial in a nutshell are as follows:

> Durbhakula Lakshmi (hereinafter referred to as the "deceased") was living with the appellant (hereinafter referred to as the "accused") since about 15 years and gave birth to two children. On 10.1.1994, at about 10.A.M. while the deceased, her father-Durbhakula Venkateswarlu (PW1), her brother, Durbhakula Ramu (PW2) and her sister, Durbhakula Kumari (PW3) were talking in their house, the accused came there, abused the deceased in filthy language and questioned the deceased as to why she returned to her father's house without informing him and why she gave information to the Railway police about his movements. By that time Gopisetty Nagamani (PW6) had reached there. He grew wild, caught hold of her hair and stabbed with a knife causing multiple injuries. When PWs. 1 to 3 came to her rescue, the accused fled away from the scene of offence pushing and threatening them with dire consequences.Makkalla Ankulu and Mekala Krishnavenamma (PW4) came out their house and noticed the incident. Mothati Setharavamma and Mekala Venkaiah, who were the immediate neighbours of PW-1 noticed the accused fleeing away from the scene of offence.

On the strength of Ex.P-1 report given by PW1, i.e. Crl. No.1/94 for alleged commission of offence punishable under Section 302 I.P.C. was registered by T. Murli Krishna, SI (PW11) and K. Suba Rao (PW12) took up investigation, visited the scene of offence, prepared Ex.P-20 rough sketch of the scene, prepared Ex P-7 observation report and conducted inquest over the dead body of the deceased under Ex.P-8- panchanama, in the presence of C.K. Reddy (PW7) and others. During inquest, Exs. P-13 to P-16 photographs of the deceased were taken. Exs. P-9 to P-12 are the corresponding negatives. PW-12 also seized blood stained earth and control earth (M.Os. 2 and 3) and also a pair of hawai chappals (M.O.-1) from the scene of offence. Dr. K.P. Rao (PW10), Medical Officer conducted autopsy over the dead body and issued Ex.P-17- Post Mortem Certificate. The accused who was found lodged in Adoni Sub Jail in another case was produced before the trial Court. The trial court framed a charge against the accused for commission of offence punishable under Section 302 I.P.C., to which the accused pleaded not guilty and claimed to be tried.

To prove its case, the prosecution in all, examined 12 witnesses, namely PWs. 1 to 12 and marked Exs. P-1 and P-27 and M.Os 1 to 6. Exs.D-1 and D-2 are the contradictions marked in Section 16 of the Code of Criminal Procedure, 1973 (in short the 'Code') statement of PW-6. After completion of trial and after hearing both sides and on considering the material available on record, the learned Sessions Judge found the accused guilty for the offence under Section 302 I.P.C., and accordingly convicted and sentenced him to undergo imprisonment for life. The Trial Court found that evidence of all other so-called eye witnesses did not help the prosecution as they departed from the version given during investigation and the case hinged on the evidence of PW1. His evidence was accepted.

As noted above, an appeal was filed before the High Court questioning correctness of the judgment of the trial court.

The High Court noticed that except PW1, the father of the deceased, no other witnesses supported the prosecution version. However, the High Court found that the evidence of PW1 i.e. the father of the deceased, was sufficient enough to fasten the guilt on the accused. Accordingly the appeal was dismissed.

In support of the appeal, learned counsel for the appellant submitted that the High Court itself noticed that the evidence of PW1 was not fully credible as he was speaking half truth and was giving an exaggerated version. Though the evidence was found to be largely inconsistent, yet it was held that the same was sufficient to hold the accused guilty. It was pointed out that the approach of the High Court is clearly unsustainable. The evidence of PW1 is full of contradictions and after having held that he was not speaking the truth and/or was exaggerating, the High Court should not have placed reliance on his evidence to hold the appellant guilty. It was further submitted that only on the version of a single witness whose evidence was discarded to a large extent, the trial court and the High Court should not have held the accused-appellant guilty.

In response, learned counsel for the respondent-State submitted that even if it is accepted, as was observed by the High Court, that PW1 was not speaking the truth yet his evidence was sufficient to establish that the accused was guilty.

Stress was laid by the accused-appellants on the non- acceptance of evidence tendered by PW1 to a large extent 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, his 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 has been found to be deficient, or to be note wholly credible. Falsity of 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 witness or witnesses cannot be branded as liar(s). 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 Alli v. The State of Uttar Pradesh [AIR 1957 SC 366]. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurucharan Singh and Anr. v. State of Punjab [AIR 1956 SC 460]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely

because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh [1972 (3) SCC 751] and Ugar Ahir and Ors. v. The State of Bihar [AIR 1965 SC 277]. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh [AIR 1954 SC 15] and Balaka Singh and Ors. v. The State of Punjab [1975 (4) SCC 511]. As observed by this Court in State of Rajasthan v. Smt Kalki and Anr. [1981 (2) SCC 752], normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. [2002 (6) SCC 81] and in Sucha Singh v. State of Punjab [2003 (7) SCC 643]. It was further illuminated in the Zahira H. Sheikh v. State of Gujarat [2004 (4) SCC 158], Ram Udgar Singh v. State of Bihar [2004(10) SCC 443], Gorle S. Naidu v. State of Andhra Pradesh [2003 (12) SCC 449] and in Gubbala Venugopalswamy v. State of Andhra Pradesh [2004 (10) SCC 120].

In the background of principles set out above it is to be seen how far the evidence of PW1 is cogent and credible. Merely because he was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence, in the background of what has been stated in Section 134 of the Evidence Act, 1872 (in short the ' Evidence Act'). No particular number of witnesses are required for the proof of any fact, material evidence and not number of witnesses has to be taken note of by the courts to ascertain the truth of the allegations made. Therefore, if the evidence of PW 1 is accepted as cogent and credible, then the prosecution is to succeed. It is to be noted that PW1-father of the appellant, claimed to have set law into motion. The testimony of PW1 was to the effect that after witnessing a part of the occurrence he had run to the police station and had come back within about five minutes. The evidence on record dis- proves veracity of this part of his evidence. The occurrence is alleged to have taken place and at about 10 P.M. the FIR was lodged at the police station at about 11.30 P.M. PW1 and the investigating officer accepted that it will take nearly one hour for somebody on foot to reach the police station considering the distance of the alleged place of occurrence and the police station. There is another interesting factor PW1 accepted in the cross examination that the report (Ex.B1) was written in the police station in the presence of sub inspector and a constable. But in his examination-in-chief, he had stated that he had got written the report by somebody at a hotel and the person normally writes petitions. No particulars of this person who allegedly scribed the report, not even his name, was stated by PW1. His evidence is

further to the effect that he alone had come to the police station where the report was lodged and that is how he admitted that the report was written at the police station. This may not appear to be that important a factor considering the illiteracy of PW1. But there is another significant factor which completely destroys the prosecution version and the credibility of PW1 as a witness. He has indicated four different places to be the place of occurrence. In his examination in chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife-the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW1 that he and his wife were separated nearly two decades ago, and that he was not in visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son-PW2 and daughters PWs. 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ex. B1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would be not proper to accept the prosecution version.

Above being the position the High Court was not right in lightly brushing aside the apparent inconsistencies and discrepancies by making a general observation that the PW1 is an illiterate person. Above being the position the impugned judgment of the High Court is set aside. The accused be set at liberty forthwith unless he is required to be in custody in connection with any other case.

Appeal is allowed.