

A ASHOK KUMAR CHAUDHARY & ORS.

V.

STATE OF BIHAR

(Criminal Appeal No. 798 of 2008)

MAY 5, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Evidence :

C *Testimony of related witnesses – Evidentiary value of –*
Accused assaulting the victims in a busy market – Conviction
by trial court – Upheld by High Court – Plea that no public
witness having been examined, related witnesses being
‘interested’, their testimony was liable to be discarded – Held
: Merely because a witness happens to be a relative of the
D *victim of crime, he cannot be characterized as ‘interested’*
witness – Relationship per se does not affect credibility of a
witness – Further, non-examination of a public witness by itself
would not give rise to an adverse inference against the
E *prosecution – On facts, courts below did not commit any infirmity*
in relying on the testimony of prosecution witnesses and
convicting the accused on its basis – However, keeping in view
the facts and circumstances of the case, sentence modified -
Sentence/sentencing – Penal Code, 1860 – Ss. 307 and 324/
34.

F *FIR – Delay in lodging – HELD : ‘ Fardbeyan’ having*
been promptly given to police in the hospital and it having
been forwarded to the Police Station the same day and delay
in registering the FIR having been satisfactorily explained,
G *prosecution case cannot be thrown out merely on the ground*
of delay in lodging the FIR.

WORDS AND PHRASES

Expression ‘interested’ witness – Connotation of.

The three appellants (A-1 to A-3) were prosecuted for

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commission of offences punishable u/ss 324 /34 and 307/ 34 IPC. The prosecution case was that on the day of occurrence, the complainant (PW 5) and PW 4 with two others went to the 'haat' (local market) to make some purchases. At about 6 p.m. they saw A-3 armed with a 'Hasua' and A-1 and A-2 with daggers dragging a person out of the 'haat' towards the road. The complainant along with his companions rushed to save the victim who turned out to be P.W.-2, the son of P.W.4. The appellants also assaulted P.W.4 and other persons, who got badly injured. Motive of the crime was stated to be previous enmity owing to civil and criminal litigation between some of the members of both the sides. The trial Court convicted A-1 and A-3 u/s 324 IPC and sentenced them to rigorous imprisonment for two months. A-2 was convicted u/s 307 IPC and sentenced to three years R.I. The High Court upheld the conviction and the sentence.

In the instant appeal filed by the accused, it was, *inter alia*, contended for the appellants that the prosecution having failed to examine independent witnesses, the evidence of related witnesses (PWs 4 and 5) and that of 'highly interested' witness (PW-2) was liable to be discarded; that there was inordinate delay of five days in lodging the F.I.R.; and that the evidence of the doctors cast doubt on the kind of the weapon used for assault.

Partly allowing the appeal, the Court

HELD: 1.1. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive. [para 7] [720-H; 721-A]

1.2 Insofar as the question of credit-worthiness of

- A the evidence of relatives of the victim is concerned, it is well settled that though the Court has to scrutinize such evidence with greater care and caution, but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship *per se* does not affect the credibility of a witness. It will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. It is the quality and not the quantity of evidence which matters. [para 7 and 12] [716-E, F, G, H; 723-F]

- 1.3 In the instant case, out of the nine witnesses examined by the prosecution, five are injured witnesses. PW-2 is the main victim, who was dragged and assaulted in the first instance; and his father, PW-4, was also stabbed. Neither their testimony nor the evidence of other three injured witnesses gives an indication that any of the witnesses, whose testimony has been relied upon by the trial court and the High Court, bore any animus against the appellants. In view of consistent evidence that has come on record, it cannot be said that non-examination of public witness makes the case of the prosecution untrustworthy or that the courts below have committed any legal infirmity in relying upon the testimony of the injured witnesses. [para 12] [722-E, F, G; 723-A, E, F, G]

- Dalip Singh Vs. State of Punjab* [1954] 1 S.C.R. 145; *Masalti Vs. State of U.P.* [1964] 8 S.C.R. 133; *Guli Chand & Ors. Vs. State of Rajasthan* (1974) 3 SCC 698; *State of Punjab Vs. Jagir Singh, Baljit Singh & Karam Singh* (1974) 3 SCC 277; *Rizan & Anr. Vs. State of Chhattisgarh, through The Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhattisgarh* (2003) 2 SCC 661; and *Namdeo Vs. State of Maharashtra* 2007 AIR SCW 1835 – relied on.

2.1 It is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. In the event the delay is properly and satisfactorily explained, the prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case. This is a matter of appreciation of evidence. [para 14 and 16] [723-H; 724-A, B, C, G]

State of H.P. Vs. Gian Chand (2001) 6 SCC 71; *Ramdas & Ors. Vs. State of Maharashtra* (2007) 2 SCC 170 – relied on.

2.2 In the instant case, PW-5 promptly gave his *fardbeyan* to the police on the very next day, i.e. 18th July, 1988 in the hospital at Patna. The *fardbeyan* was forwarded by the police to the police station concerned the same day and on the basis thereof, the formal F.I.R. was registered on 22nd July, 1988. Though there is no denying the fact that there was delay in registration of F.I.R. but it is nobody's case that the F.I.R. was not in consonance with the *fardbeyan* or it was embellished in any manner. The courts below have found that in the light of the surrounding circumstances and the fact that the police station was about 12 kms. away from the place of occurrence, the delay has been satisfactorily explained; and, therefore, it cannot be said that the courts below have committed an error in accepting the explanation for the delay. [para 17] [725-A, B, C, D]

3. Insofar as the nature of injuries caused to PW-4 is concerned, the evidence of both the doctors is consistent. Both of them have deposed that the injuries had been caused by "*sharp cutting weapon such as chhura*". When the injuries, the time and place of occurrence stand proved, the said variation in *fardbeyan* fades into insignificance and cannot be held to be fatal to the prosecution case.

A [para 19] [725-G; 726-A]

4. On the basis of the evidence of the witnesses, the High Court has concurred with the findings of the trial court that the prosecution has succeeded in bringing home the offences, the appellants were charged with.

B Nothing substantial has been shown to interfere with the conviction of the appellants. [para 20] [726-A, B]

5. Having regard to the facts and circumstances of the case and bearing in mind the fact that the subject incident had taken place almost two decades ago, it is a fit case where sentences awarded to the appellants deserve to be reduced. Therefore, the sentence of two months rigorous imprisonment awarded to appellants Nos.1 and 3 is set aside and instead they are sentenced to pay a fine of Rs.20,000/- each. Similarly, the sentence of three years rigorous imprisonment awarded by the Trial Court to appellant-2 is reduced to one year rigorous imprisonment. He shall also be liable to pay a fine of Rs.20,000/-. [para 21-22] [726-C, D, E, F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 798 of 2008.

From the Judgment and Order dated 1.12.2006 of the High Court of Judicature at Patna in Criminal Appeal No. 141 of 1992.

F P.N. Lekhi, Samar Bansal, Lokesh Kumar and M.K. Garg, for the Appellants.

Manish Kumar and Gopal Singh for the Respondent.

G The Judgment of the Court was delivered by

D.K. JAIN, J. 1. Leave granted.

2. The three appellants in this appeal, namely, Ashok Kumar Chaudhary, Kailash Chaudhary and Baiju Chaudhary (hereinafter referred to as appellants A-1 to A-3 respectively) arrayed as

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accused Nos. 1, 3 and 2 respectively in the charge-sheet, faced trial in Sessions Trial Case No. 187 of 1989, for having committed offences punishable under Sections 324 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short the I.P.C.). The trial court found appellants A-1 and A-3 guilty of offence under Section 324 I.P.C. and sentenced them to undergo rigorous imprisonment for two months each. However, appellant, A-2 was found guilty of offence under Section 307 I.P.C. and was sentenced to undergo rigorous imprisonment for three years. All the three convicts preferred common appeal to the High Court of Judicature at Patna. The High Court upheld the decision of the trial court, which has resulted in the present appeal.

3. The case of the prosecution in brief was that on 17th July, 1988 at about 6 p.m. the informant (PW-5) along with Bijoy Kumar Sanyal, Hardeo Chaudhary and Kishan Singh had gone to Dharampur Haat (Market) to make some purchases. They saw the appellants dragging a person out of the Haat towards the road. They along with some other bystanders raised *halla* (shouting), whereupon the informant and others reached the spot and tried to rescue the victim, who turned out to be the son of the said Hardeo Chaudhary. Meanwhile, appellant, A-3 who was carrying a *Hasua* and appellants, A-1 and A-2 who were carrying daggers assaulted the informant and other persons. They were badly injured. Hardeo Chaudhary sustained injuries in his abdomen whereas Bijoy Kumar Sanyal sustained dagger injuries in his chest and thigh and Kishan Singh sustained injuries on his head. The motive of occurrence was given as previous enmity.

4. *Fardbeyan* of the informant was recorded by the A.S.I. of Pirbahore police station and was forwarded on the next day to the officer incharge of Bidupur police station within whose jurisdiction the occurrence had taken place. On the basis of the *fardbeyan*, a formal F.I.R. was registered. After completion of investigation, charge-sheet was submitted against the appellants under Sections 324, 307 read with Section 34 I.P.C.

- A 5. Out of the total nine witnesses examined by the
prosecution to establish its case, five were the persons who
had been injured in the assault. Relying on the testimony of the
injured witnesses, the trial court convicted the appellants for the
offences aforesaid. As noted above, conviction and sentences
B awarded to the appellants have been affirmed by the High Court.

6. Mr. P.N. Lekhi, learned senior counsel appearing for
the appellants has assailed the convictions on a number of
grounds. Firstly, it is submitted that the incident having taken
place at a public place in the evening, the prosecution ought to
C have examined some independent witnesses. Having failed to
do so, the evidence of PW-4 and PW-5 should be discarded
as being closely related to the victim – Ajay Kumar, they were
“highly interested” and prone to falsely implicate the appellants,
particularly when PW-4 was also involved in civil and criminal
D litigation with one of the appellants’ herein.

7. We are not impressed with the argument. Though it is
true that the incident having taken place near the market around
6 p.m. on 17th July, 1988, the prosecution should have attempted
to secure public witnesses who had witnessed the incident, but
E at the same time one cannot lose sight of the ground realities
that the members of the public are generally insensitive and
reluctant to come forward to report and depose about the crime
even though it is committed in their presence. In our opinion,
even otherwise it will be erroneous to lay down as a rule of
F universal application that non examination of a public witness
by itself gives rise to an adverse inference against the
prosecution or that the testimony of a relative of the victim, which
is otherwise credit-worthy, cannot be relied upon unless
corroborated by public witnesses. Insofar as the question of
G credit-worthiness of the evidence of relatives of the victim is
concerned, it is well settled that though the Court has to scrutinize
such evidence with greater care and caution but such evidence
cannot be discarded on the sole ground of their interest in the
prosecution. The relationship *per se* does not affect the
H credibility of a witness. Merely because a witness happens to

be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.

8. In *Dalip Singh Vs. State of Punjab*¹, this Court had the occasion to deal with the question as to whether a relative is *per se* an "interested" witness. Dispelling the general impression that relatives were not independent witnesses, speaking for the Court, Vivian Bose, J., observed thus:

"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. 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."

9. In *Masalti Vs. State of U.P.*², a four-Judge Bench of this Court had observed that though the evidence of an interested or partisan witness has to be weighed by the Court very carefully but it would be unreasonable to contend that evidence given by a witness should be discarded only on the ground that it is evidence of a partisan or interested witness. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. (Also see: *Guli Chand*

¹ [1954] 1 S.C.R. 145

² [1964] 8 S.C.R. 133

A & Ors. Vs. State of Rajasthan³ and State of Punjab Vs. Jagir Singh, Baljit Singh & Karam Singh⁴).

B 10. To the same effect is the decision in *Rizan & Anr. Vs. State of Chhatisgarh, through The Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhattisgarh*⁵, wherein this Court has observed that relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal the actual culprit and make allegations against the 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.

D 11. Very recently in *Namdeo Vs. State of Maharashtra*⁶, one of us (C.K. Thakker, J.) has said that a close relative cannot be characterized as an "interested" witness. He is a natural witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

F 12. In the instant case, as noted above, out of the nine witnesses examined by the prosecution, five are injured witnesses, which include PW-2—Ajay Kumar, the main victim, who was dragged and assaulted in the first instance and his father, PW-4—Hardeo Chaudhary, who was also stabbed. Neither their testimony nor the evidence of other three injured witnesses gives an indication that any of the witnesses, whose

³ (1974) 3 SCC 698

⁴ (1974) 3 SCC 277

⁵ (2003) 2 SCC 661

H ⁶ 2007 AIR SCW 1835

testimony has been relied upon by the trial court and the High Court, bore any animus against the appellants. It is true that in the cross-examination, an attempt was made to cast a doubt that on account of an old case filed by the appellant No.1—Ashok against PW-4, the said witness was deposing against the appellants but in the light of the graphic details of the incident given by the said witness, who had also sustained serious injuries in the stomach, there was no reason for the Courts below to disbelieve the evidence of PW-4. Similarly, PW-5, who, in his cross-examination had divulged that appellant Kailash Chaudhary was his brother by gotra, was also injured, had been cross-examined at length, but nothing could be elicited to show that he had any animosity towards the appellants or to discredit his deposition in support of the prosecution. The Trial Court as well as the High Court have found the evidence of all these witnesses to be trustworthy and reliable, and it has been recorded that their evidence inspires confidence and stands corroborated by the medical evidence. The Trial Court has also taken note of some minor variation in the timing of the occurrence, which has also been highlighted before us by learned counsel for the appellants, and has held that negligible variation of half an hour between the testimony of PW-1 to PW-5, wherein all of them have given the time of occurrence either at about 5.30 P.M. or between 5-6 P.M. (PW-5) and the evidence of PW-8, wherein the time of occurrence has been given as 5.00 P.M. hardly affects the prosecution case. In view of consistent evidence that has come on record, it cannot be said that non-examination of public witness makes the case of the prosecution untrustworthy or that the courts below have committed any legal infirmity in relying upon the testimony of the injured witnesses. It is the quality and not the quantity of evidence which matters.

13. It was then contended by learned counsel for the appellants that there was inordinate delay of five days in lodging the F.I.R., which is fatal to the prosecution case.

14. It is trite that mere delay in lodging the first information

- A report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the Court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case.

15. On this aspect, in *State of H.P. Vs. Gian Chand*⁷, a three-Judge Bench of this Court had observed thus:

- “Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

16. More recently in *Ramdas & Ors. Vs. State of Maharashtra*⁸ it has been observed that the question whether the delay in lodging the report adversely affects the case of the prosecution has to be considered in the light of the totality of the evidence. This is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay.

⁷ (2001) 6 SCC 71

H ⁸ (2007) 2 SCC 170

Even in the absence of direct explanation, there may be host of circumstances appearing on record which may provide reasonable explanation for the delay. A

17. In the present case, PW-5—Laxmi Chaudhary promptly gave his *fardbeyan* to the police on the very next day, i.e. 18th July, 1988 in the hospital at Patna. The *fardbeyan* was forwarded by the police to the concerned police station the same day and on the basis thereof, the formal F.I.R. was registered on 22nd July, 1988. Though there is no denying the fact that there was delay in registration of F.I.R. but it is nobody's case that the F.I.R. was not in consonance with the *fardbeyan* and it was embellished in any manner. The courts below have found that in the light of the surrounding circumstances and the fact that the concerned police station was about 12 kms. away from the place of occurrence, the delay has been satisfactorily explained and, therefore, it cannot be said that the courts below have committed an error in accepting the explanation for the delay. The contention raised by the learned counsel for the appellants is, thus, rejected. B C D

18. It was then contended by learned counsel for the appellants that the evidence of two doctors, namely, Krishna Nand Singh (PW-6) and Dr. R.K. Agrawal (PW-7) who had examined Hardeo Chaudhary cast a doubt on the kind of the weapon used for assault. It is pointed out that in their respective depositions both the doctors have opined that the injuries were caused by a sharp cutting weapon like "*chhura*", whereas in his *fardbeyan* PW-5 had stated that appellant Kailash Chaudhary had taken out "*Hasua*" and started inflicting injuries. It was urged that this discrepancy falsifies the case of the prosecution. E F

19. We do not find much substance in the contention. In our view, insofar as the nature of injuries caused to Hardeo Chaudhary is concerned, the evidence of both the doctors is consistent. Both of them have deposed that injuries had been caused by "*sharp cutting weapon such as chhura*". In our view, when the injuries, the time and place of occurrence stand proved, G H

A the said variation in *fardbeyan* fades into insignificance and cannot be held to be fatal to the case of the prosecution.

B 20. Thus, on the basis of the evidence of the witnesses, the High Court has concurred with the findings of the Trial Court that the prosecution has succeeded in bringing home the offences, the appellants were charged with. Nothing substantial has been shown to persuade us to interfere with the conviction of the appellants.

C 21. Lastly, it was pleaded by Mr. Lekhi that the sentence awarded to the appellants, particularly appellant No.2 – Kailash Chaudhary who is an old person of about 81 years of age and has already undergone five months rigorous imprisonment, may be reduced. Having regard to the facts and circumstances of the case and bearing in mind the fact that the subject incident had taken place almost two decades ago, we are of the view that it is a fit case where sentences awarded to the appellants deserve to be reduced.

E 22. Accordingly, the appeal is partly allowed to the extent indicated above. The order of conviction passed against all the appellants is maintained. However, the sentence of two months rigorous imprisonment awarded to appellants No.1 and 3 is set aside and instead they are sentenced to pay a fine of Rs.20,000/- each within six weeks from today, failing which they will undergo rigorous imprisonment for a period of one month. Similarly, the sentence of three years rigorous imprisonment awarded by the Trial Court to appellant – Kailash Chaudhary is reduced to one year rigorous imprisonment. He shall also be liable to pay a fine of Rs.20,000/- within six weeks from today and in default will undergo further rigorous imprisonment for a period of one month. The amount (s) of fine so recovered shall be paid in equal proportion, to Bijoy Kumar Sanyal, Kishan Singh, Hardeo Chaudhary and Laxmi Chaudhary, who all were injured in the incident.

H R.P.

Appeal partly allowed