PONNAM CHANDRAIAH

v.

STATE OF A.P.

(Criminal Appeal No.1182 of 2008)

JULY 30, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860; Ss.147, 148, 149, S.302 r/w S.149; S.324-r/w. s.149 & s.448:

Assault and murder – Accused, 16 in number, armed with weapons attacked the deceased and injured him – Deceased succumbed to injuries in hospital – F.I.R. – Investigation – Chargesheet – Relying on evidence of relatives, eye witnesses, trial Court found accused persons guilty of committing offences of assault and murder of the deceased by forming an unlawful assembly and sentenced all of them to life imprisonment – Affirmed by High Court against all the accused persons excepting A2, A4, A5, A6, A10, A11 and A14 to A16 – Correctness of – Held: Relationship is not a factor to affect credibility of a witness – Generally a relation would not conceal the actual culprit and make allegations against an innocent person – Foundation has to be laid if plea of false implication is made – The Court has to adopt a careful approach in analyzing evidence of witnesses to find out its credibility – Even if major portion of evidence found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction could be maintained – Notwithstanding acquittal of co-accused person, conviction of accused-appellant could be maintained – However in the facts and circumstances of the instant case, the proper conviction would be under s.304 Pt. I instead of s.302 IPC – Conviction of the appellants altered accordingly – Sentencing.

Maxims:

Maxim 'Falsus in uno falsus in omnibus' – Applicability of.

A According to the prosecution, on the fateful day, accused persons, sixteen in number, armed with weapons came to the house of the deceased and attacked him. When PW-2, father of the deceased, intervened to rescue the deceased, A-1 beat him with a stick. The accused per-
B sons beat the deceased indiscriminately. At last, the deceased fell down at the Gram panchayat office. He was taken to a Government Hospital by PW 5 and others. On the advise of the Doctor, a complaint was lodged by them in the Police Station and the police registered a crime
C against the accused persons for committing offences under Sections 147, 148, 448, 307, 327 read with 149 of I.P.C. Later, the deceased succumbed to the injuries. The Police arrested the accused and, after completion of the investigation, submitted the charge sheet. Trial Court
D found all the accused persons guilty for commission of offences punishable under Sections 147,148, 448 read with Sections 149, 302 read with Section 149 and Section 324 read with Section 149 of the Indian Penal Code, 1860 and sentenced them accordingly. In appeal, High Court upheld the conviction and sentence of A1, A3, A7 to A9,
E A12 and A13 but acquitted other accused persons. Hence, the present appeals filed by A7 to A9 and A 13.

Accused persons contended that the conviction is based primarily on the evidence of witnesses who were
F related to the deceased. Further the accusations even if accepted in toto do not make out a case relatable to Section 302 IPC.

Partly allowing the appeals, the Court

G HELD: 1.1 In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an inno-
H cent person. Foundation has to be laid if a 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. (Para – 8) [567-C-D] A

1.2 The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. (Para – 11) [568-C] B

Dalip Singh and Ors. v. The State of Punjab AIR (1953) SC 364; *Guli Chand and Ors. v. State of Rajasthan* (1974) 3 SCC 698; *Vadivelu Thevar v. State of Madras* AIR (1957) SC 614; *Masalti and Ors. v. State of U.P.* AIR (1965) SC 202 and *State of Punjab v. Jagir Singh* AIR (1973) SC 2407 and *Lehna v. State of Haryana* (2002) 3 SCC 76 – relied on. C

1.3 Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses 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"*. 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, notwithstanding acquittal of number of other co-accused persons, 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 to prove guilt of other accused persons. (Para – 13) [569 C-E] D E F

1.4 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 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 G H

A **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'. (Para – 13) [569 E-G]**

Nisar Ali v. The State of Uttar Pradesh **AIR (1957) SC 366;** *Sucha Singh and Anr. v. State of Punjab* **(2003) 6 JT SC**
B **348;** *Israr v. State of U.P.* **(2005) 9 SCC 616 and** *S. Sudershan Reddy v. State of A.P.* **AIR (2006) SC 2716 – relied on.**

2. In Criminal appeal Nos. 222 of 2007, this Court has occasion to deal with the cases of some of the co-accused
C **persons and held that the proper conviction would be Section 304 Part I IPC instead of Section 302 IPC. The conviction of the appellants is accordingly altered from Section 302 read with Section 149 to Section 304 Part I read with Section 149 IPC. Custodial sentence of 10 years**
D **would meet the ends of justice. The conviction and sentence is altered accordingly. (Para – 16) [570 C-E]**

Case Law Reference

AIR (1953) SC 364	**Relied on**	**Para - 9**
E **(1974) 3 SCC 698**	**Relied on**	**Para - 10**
AIR (1957) SC 614	**Relied on**	**Para - 10**
AIR (1965) SC 202	**Relied on**	**Para - 12**
AIR (1973) SC 2407	**Relied on**	**Para - 13**
F **(2002) 3 SCC 76**	**Relied on**	**Para - 13**
AIR (1957) SC 366	**Relied on**	**Para - 13**
(2003) 6 JT SC 348	**Relied on**	**Para - 14**
G **(2005) 9 SCC 616**	**Relied on**	**Para - 14**
AIR (2006) SC 2716	**Relied on**	**Para - 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1182 of 2008

H

From the Judgment and Order dated 27.7.2006 of the High Court of Judicature Andhra Pradesh at Hyderabad in Crl. Appeal No. 1130 of 2005 A

WITH

Crl. A. No. 1183 of 2008 B

K. Amareswari, V.R. Reddy, P. Venkat Reddy, Anil Kumar Tandale, V.G. Pragasam, S.J. Aristotle and Prabu Ramasubramanian for the Appellant.

D. Bharathi Reddy for the Respondent. C

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Appellants question correctness of the judgment rendered by a Division Bench of the Andhra Pradesh High Court. D

3. Sixteen persons including the appellants faced trial for alleged commission of offences punishable under Sections 147,148, 448 read with Sections 149, 302 read with Section 149 and Section 324 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC') Learned III Additional Sessions judge, Karimnagar for each one of them guilty. In appeal, High Court upheld the conviction of A1, A3, A7 to A9, A12 and A13 and sentence of imprisonment for life as imposed by the trial court. Rest of the accused persons were acquitted. The present appeals are by A7 to A9 and A 13. E F

4. Background facts in a nutshell are as follows:

PW-1 is the wife,. PW-2 is the father, PW-3 is the mother, PW-4 is the brother and PW-5 is the sister-in-law of the deceased. The accused, deceased and the material witnesses are residents of Neerukulla village. The deceased purchased an Auto and was plying in between Sulthanabad and Neerukulla. On 02-07-2003 at about 9-00 PM, the deceased returned to his house from Sulthanabad and informed PWs.I to 3 that when he requested A-1 and A-2 to travel in his Auto as per the serial G H

A number, they refused to travel in his Auto and beat him. On 03-07-2003 morning, PW-1 and the deceased went to the house of the Sarpanch and raised a dispute. 'The Sarpanch called A-1-and informed about the incident. A-1 admitted his guilt in the presence of PWs.9 and 10. On the same day at about 6-00 B PM, A-1 to A-16 came to the house of the deceased and attacked him. A-1 beat the deceased with a stick. The deceased ran into the house and bolted the door. In the meanwhile, when PW-2 intervened to rescue the deceased, A-1 beat him with a stick. A-3 broke the doors and all the accused entered the house and beat the deceased. Some of the accused were armed with C iron rods and axes. They beat the deceased indiscriminately. Then the deceased ran out from the house. The accused chased and beat him indiscriminately. Finally, the deceased fell down at the Gram panchayat office on receipt of the injuries. Later, the deceased was taken in an Auto to the Government Hospi-D tal, Sulthanabad. On the advise of the Doctor, they went to the Police Station and gave Ex P-1 report. On the basis of Ex.P-1, the police registered a crime for the offences under Sections 147, 148, 448, 307, 327 read with 149 of I.P.C. Thereafter, the deceased and PW-2, who received injuries, were referred to E the Government Hospital, Karimnagar. The deceased, while undergoing treatment, succumbed to the injuries. After the death of the deceased, the Sections of law were altered in the crime through the alteration memo. The Inspector of Police took up investigation, prepared the rough sketch, observed the scene F of offence, held inquest over the dead body of the deceased, seized M.Os.1 and 2 and later sent the dead body for postmortem examination. The accused were arrested and weapons were recovered. After completion of the investigation, the police laid the charge sheet. The accused denied the charges G and claimed for trial.

The prosecution, in order to prove the guilt of the accused, examined PWs.1 to 22 and marked Exs.P-.1 to P-39. On behalf of the defence, no oral evidence was adduced, but Ex.D-1, a portion of Section 161 Cr.P.C. statement of PW-3 was H marked.

5. High Court by a common judgment disposed of four appeals numbered as Criminal Appeal Nos. 1114, 1128, 1130 and 1155 of 2005.

6. In support of the appeals learned counsel for the accused persons submitted that the conviction is based primarily on the evidence of witnesses who were related to the deceased. Further the accusations even if accepted in toto do not make out a case relatable to Section 302 IPC.

7. Learned counsel for the respondent State on the other hand supported the judgments of the Courts below.

8. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a 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.

9. 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.

A 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."

B 10. 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.

11. We may also observe that the ground that the witness C 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 D 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 E 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 F 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."

G 12. 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..... H

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."

13. 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 some witnesses 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, notwithstanding acquittal of number of other co-accused persons, 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 to prove guilt of other accused persons. 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).

14. The above position was elaborately discussed in *Sucha Singh and Anr. v. State of Punjab* (2003 (6) JT SC 348),

A and *Israr v. State of U.P.* (2005 (9) SCC 616)

15. In *S. Sudershan Reddy v. State of A.P.* (AIR 2006 SC 2716), it was observed; 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
B 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.

C 16. In Criminal appeal Nos. 222 of 2007, this Court has occasioned to deal with the cases of some of the co-accused persons. In that case it was concluded as follows:

"If the evidence on record is considered on the touchstone principles set out above the inevitable conclusion is that
D the proper conviction would be Section 304 Part I IPC instead of Section 302 IPC. The conviction of the appellants is accordingly altered from Section 302 read with Section 149 to Section 304 Part I read with Section 149 IPC. Custodial sentence of 10 years would meet the
E ends of justice. The findings of the guilt in respect of other offences and the sentences imposed do not warrant interference. The sentence shall run concurrently."

17. In view of what has been stated in the aforesaid Criminal Appeal, the appeals are allowed to the aforesaid extent.
F

18. The appeals are partly allowed.

S.K.S. Appeals partly allowed.