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CHANDRASEKAR AND ANOTHER

v.

STATE

(Criminal Appeal No. 1345 of 2012)

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MAY 22, 2017

[L. NAGESWARA RAO AND NAVIN SINHA, JJ.]

*Penal Code, 1860 – ss. 302, 324 – Repeated assault by appellants on deceased's head with weapons resulting in his death – Witness also suffered injuries – Motive was acquittal of the deceased day before in a criminal prosecution at the behest of appellant – Conviction of appellants u/s. 302 and sentenced to life imprisonment – Appellant 'C' also convicted u/s. 324 with six months rigorous imprisonment – Said order upheld by the High Court – Interference with – Held: Not called for – Indiscriminate assault on deceased's head, reflects the individual intention of each one of them to ensure the death of deceased – Number of injuries on the head of deceased sufficient to conclude the nature of murderous assault made by appellants – Thus, intention to cause death, alongwith motive stands established – Credibility and reliability of PW-1 as eye witness, established – Failure of the prosecution to place the first injury report of the witness not fatal – Reliable ocular evidence available – PW-2 and PW-3 also eye-witnesses to occurrence, established.*

Dismissing the appeals, the Court

**F** HELD: 1.1 The appellants came together armed at the place of occurrence in a car. Their utterances before a merciless assault primarily on the head, that acquittal by the Court would bring no succor to the deceased, reflects a state of preparedness and is an expression of the intention that they were determined to do away with the deceased. The intention to cause death, alongwith motive therefore stands established. [Para 8] [779-E-F]

**G** 1.2 Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. The number of injuries on the head of the deceased is sufficient

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to conclude the nature of murderous assault made by all the appellants. No suggestion was given to PW-1 that he was not present at the time of assault and that he was not injured in the same occurrence. It establishes his credibility and reliability as an eye witness speaking the truth. Since he was an eye witness to the assault which took place in broad daylight, and the number of injuries makes it evident that it continued for some time, there is nothing suspicious in his evidence when he describes the manner, nature and weapon of assault by the appellants. [Paras 9, 10] [780-A-C]

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1.3 The failure of the prosecution to place the injury report of the witness from the Government Hospital, where he was first taken for treatment is a lacuna, but cannot be held to be fatal as to doubt the entire prosecution case or shake the credibility of the witness. It cannot lead to any conclusion of his injury report being fabricated. No such suggestion was made by the defence to PW-12-doctor. The appellants are named in the FIR registered soon after the occurrence. The fact that the witness may have stated of assault by two known persons to PW-12, without naming any of the appellants is inconsequential. The doctor was a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. [Para 11] [780-E-G]

1.4 The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony. It may only call for greater scrutiny and caution in consideration of the same. The animosity of the appellants was primarily with the deceased on account of his acquittal the previous day, in the criminal prosecution. The transfer of lands by the deceased in favour of the witness, being a completed transaction, is considered too remote a circumstance for enmity between appellants and witness as a ground for false implication. In any event, because of the reliable ocular evidence available, motive loses much of its relevance. [Para 12] [781-C-E]

1.5 The fact that PW-2 and PW-3 were also eye witnesses to the occurrence stands well established. PW-2 being the wife

- A of the deceased, there is no reason why she would not be speaking the truth with regard to the real assailants instead of shielding them by false implication. The fact that she had the courage to name her own in-laws as the assailants is also a factor which speaks of the reliability of her evidence. The trial judge rightly believed PW-2 and PW-3 to be eye-witnesses. PW-4, independent witness, referred to by PW-3 as also having been present deposed of the appellants attacking the deceased. The fact that in his cross-examination he may have stated that he was not aware how appellant and PW-1 sustained injuries cannot classify him as hostile or completely unreliable witness. [Para 13][781-G-H; 782-A-B]
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- C 1.6. The appellants came together armed with a hammer, sickle and iron rod respectively. They assaulted the deceased indiscriminately on the head repeatedly, a very sensitive part of the human body reflecting the individual intention of each one of them to ensure the death of the deceased. The number of injuries caused on the head speaks for itself regarding the intention of the appellants. In the facts and circumstances of the case, there is no reason to interfere with the conviction of the appellants. [Paras 14, 16] [782-B-C, D]
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*Brahm Swaroop v. State of U.P. (2011) 6 SCC 288 : [2010] 15 SCR 1; Pattipati Venkaiah v. State of A.P (1985) 4 SCC 80 – referred to.*

Case Law Reference

E	[2010] 15 SCR 1	referred to	Para 10
F	(1985) 4 SCC 80	referred to	Para 11

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1345 of 2012.

G From the Judgment and Order dated 30.08.2010 of the High Court of Judicature at Madras in Crl. A. No. 91 of 2010

WITH

Criminal Appeal No. 1346 of 2012.

H Gopal Shankaranarayan, Anil Kumar Mishra-I, Ranjith B. Marar, Lakshmesh S. Kamath, Deepak Anand, Ms. Lakshmi K., Advs. for the Appellants.

Ms. Nithya, M. Yogesh Kanna, Utkarsh Srivastav, Partha Sarathi, Advs. for the Respondent. A

The Judgment of the Court was delivered by

**NAVIN SINHA, J.** 1. The appellants stand convicted under Section 302 IPC to life imprisonment. Appellant Chandrasekar additionally stands convicted under Section 324 IPC to six months rigorous imprisonment. B

2. The statement of the injured, PW-1 Lalbahadur Sastri, brother-in-law of the deceased Gnanasekaran, was recorded by the Sub-Inspector of Police at the Udumalpet Government Hospital on 17.07.2007 at 10:00 AM with regard to the assault made by the appellants on the deceased and the witness, the same morning at 7:30 AM. The motive was ascribed to the acquittal of the deceased the previous day, in a criminal prosecution at the behest of appellant Govindaraj. The deceased was assaulted by the appellants repeatedly on the head with a hammer, sickle and iron rod respectively. The witness was also assaulted by the appellants causing injuries. Formal FIR was registered the same day under Section 506 (ii) and 307, IPC. The deceased expired at the hospital on the same day at 11:30 AM after which Section 302 IPC was also added. C

3. The postmortem of the deceased, Exhibit P-5, was conducted by PW-11 Dr. Jayasingh, who found the following injuries on the person of the deceased: D

1) A vertical incised wound measuring 3 x 1 x 4 cm, brain deep noted on right temporal regions 2 cm behind upper end of right ear, 4 cm above to tip of right mastoid on dissection, the wound cutting the underlying scalp, skull, and dura and enter into the brain tissue measuring 3 x 0.5 x 2 cm. Diffused subdural and sub arachnoid hemorrhage noted on both cerebral hemisphere. E

2) A transverse incised wound measuring 3 x 0.5 x 5 cm brain deep noted on right temporal region. The lower end of the wound starting from the lower end of the wound no. 1 and ends at the level of upper end of right ear. On dissection, the wound cutting the underlying scalp, skull, and dura and enter into the brain tissue measuring 4 x 0.5 x 2 cm. F

3) A sutured laceration 2 x 0.5 x brain deep with surroundings contusion measuring 8 x 4 cm noted on right temporal region 3 cm above to wound no.2, and 7 cm below to sagital suture line. G

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A On dissection, the underlying sub scalpel area is contused measuring 9 x 5 cm, the skull bone is fractured into multiple pieces in varying size and shape, the dura is torn and the brain tissue is lacerated measuring 4 x 3 x 2 cm deep.

B 4) A round shaped contusion 3 cm in diameter noted on right side temple 0.5 cm medial to wound no.2 and 0.5 cm below to wound no.3. On dissection underlying sub scalpel area is contused, the skull shows perforation of about 2.6 cm in diameter and the detached part of the skull is found lying over the dura.

C 5) A sutured lacerated wound noted on right side upper cheek measuring 2 x 0.5 x 1 cm bone deep. On dissection the underlying maxilla is fractured, with surrounding muscles bruised.

D 6) A transversely incised sutured wound measuring 3 x 0.5 x 0.5 cm muscle deep noted on the 1 cm below to wound no.5, and 0.5 cm medial to right ear lobe.

E 7) A sutured lacerated wound, 4 x 0.5 x brain deep noted on the upper part of right parietal region. On dissection underlying Subscalpal region bruised, the skull sows perforation of about 2.6 cm in diameter and the detached part of the skull is found lying over the dura.

F 8) A sutured lacerated wound, 3x0.5x bone deep noted on the lower part of right parietal region. On dissection underlying Subscalpal region bruised, the skull bone is fractured, measuring 3 x 0.25 x brain deep.

9) A sutured lacerated wound, 3 x 0.5 x skin deep noted on the mid occipital region. On dissection underlying Subscalpal region bruised.

10) A curved incised wound 2 x 0.5 x skin deep noted on left occipital region. On dissection underlying Subscalpal region bruised.

G 11) A curved lacerated wound 3 x 1 x skin deep noted on centre of left parietal bone. On dissection underlying Subscalpal region bruised.

H 12) A sutured lacerated wound, 4x0.5x brain deep noted on the lower part of right parietal region. On dissection the underlying

subscalpel area is contused, the skull shows perforation of about 2.6 cm in diameter and the detached part of the skull is found lying over the dura.

13) A curved sutured incised wound 4x0.5x skin deep noted on left side temporal region.

14) An incised wound 11x0.5x muscle deep noted on outer aspect of left arm.

15) A sutured incised wound 3x0.5x muscle deep noted on back of right thumb.

16) Abrasion 4x2 cm noted on right forehead.

17) Abrasion 3x2 cm noted on front of right knee.

18) Abrasion 4x0.5 cm noted on outer aspect of right chest.

The cause of death was opined to the multiple Cranio cerebral injuries sustained.

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4. The injury report of PW-1 Lalbahadur Sastri, Exhibit P-6 was proved by PW-12 Dr. Krishnaraj of the Ramakrishna Hospital, who found the following injuries on his person:

1) U shaped laceration over right forearm 10x5cm volar aspect middle third exposing the muscle.

2) Laceration from middle third of left forearm to middle phalanx of left little finger with Ulnar nerve cut with tendon injury and ligament injury.

3) 5<sup>th</sup> MCP joint disrupted.

4) Multiple lacerated injury over the face.

Injuries 2 and 3 were grievous and injuries 1 and 4 simple in nature.

5. The submission on behalf of the appellant Balasubramanian was that there was no motive for him to commit the assault. Enmity existed between the deceased and appellant Govindaraj. PW-1 Lalbahadur Sastri in his cross-examination stated that PW-2 Lakshmi and PW-3 Udayachandran were not present at the time of the assault. The latter two, therefore, cannot be considered as eye-witness. Their evidence is completely at variance as they claim that PW-1 Lalbahadur

- A Sastri reached after them. Kandasamy who took the deceased to the Coimbatore Hospital has not been examined. PW-1 Lalbahadur Sastri first went to the Udumalpet Government Hospital. But there is no injury report with regard to him from that hospital. The subsequent injury report, prepared at 5:30 PM at the Ramakrishna Hospital, cannot be accepted as true in absence of any explanation by the prosecution for non-production of the first injury report. The injury report by PW-12 Dr. Krishnaraj mentions that the injured spoke of assault by two known persons only with a hammer and sickle. The astrologer Ramachandran, named by PW-3 Udayachandran to have been accompanying them, has also not been examined. Injury no. 4 alone can be attributed to the appellant, Balasubramanian by a hammer. It cannot be said that death was attributable to it alone. He would, therefore, at best be liable under Section 304 Part II, IPC. The three prosecution witnesses are closely related to each other. They fall in the category of interested witness. It will not be safe to convict on the basis of the solitary evidence of PW-1 Lalbahadur Sastri alone. The only material against the appellant, Balasubramanian is that he drove the car in which the appellants had come. PW-14 Murugan, the seizure witness, has turned hostile stating that his signature was obtained at the Police Station. If the attack lasted for two minutes, it is difficult to accept that PW-1 Lalbahadur Sastri in that short time was able to note the registration number of the vehicle in which the appellants had come, identify each of the appellants along with their weapons and the assault made on which part of the body of the deceased. The witness had purchased family lands from the deceased which was being opposed by the appellants. He has, therefore, falsely implicated them to obviate any possibility of opposition from them.
- F 6. In addition to the common submissions on behalf of the other two appellants, it was additionally submitted that PW-4 Ramachandran, the only independent witness, in his cross-examination, stated that he does not know how the deceased and PW-1 Lalbahadur Sastri suffered injuries. The witness named only two known persons as the assailants at the time of his medical examination, without specifically naming anyone.
- G 7. Learned Counsel for the State submitted that the conviction calls for no interference. The deceased was mercilessly assaulted and the large number of injuries on his person is sufficient evidence with regard to the brutality of the assault. Death occurred as a cumulative nature of the head injuries attributed to the appellants. PW-1 Lalbahadur
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Sastri is an injured witness whose credibility is always very high. The appellants do not deny his presence or that he was not injured in the same occurrence. Merely because the deceased may have been the brother-in-law of the witness will not make his evidence doubtful or unacceptable. PW-2 Lakshmi is the wife of the deceased. There is no reason why she should not be speaking the truth, hiding the name of the real assailants of her husband in front of her eyes. A conjoint reading of the evidence of PWs. 1 to 3 reveals that they are eye witnesses of the assault and were present in the field when the appellants came in the car fully armed and assaulted without provocation. Motive is apparent from the acquittal of the deceased, the previous day and the utterance of the appellants that acquittal by the Court would not come to their rescue.

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8. We have considered the submissions on behalf of the parties, and perused the evidence on record. The deceased was the brother of appellants Balasubramanian and Govindaraj. Appellant Chandrashekharan is the son of Govindaraj. PW-2 Lakshmi is the wife of the deceased and PW-3 Udaychandran is the son of her elder sister. PW-1 is the brother of PW-2 Lakshmi. Relations between the deceased and the appellants were far from cordial, whether it be their dissatisfaction with the sale of lands by the deceased to PW-1 Lalbahadur Sastri or the acquittal of the deceased the previous day, in a criminal prosecution under Section 307,324 IPC by appellant Govindaraj. The appellants came together armed at the place of occurrence in a car. Their utterances before a merciless assault primarily on the head, that acquittal by the Court would bring no succor to the deceased, reflects a state of preparedness and is an expression of the intention that they were determined to do away with the deceased. The intention to cause death, alongwith motive therefore stands established.

9. PW-1 Lalbahadur Sastri deposed that upon return to the fields after delivering milk, he saw a white Maruti car standing. The witness therefore had ample opportunity to identify the vehicle including the registration number of the same. Additionally, the parties being related to each other, the witness being acquainted with the vehicle owned by the appellants shall be a natural presumption in accordance with human behavior. The appellants then assaulted the deceased mercilessly and repeatedly on the head. Balasubramanian assaulted with a hammer, Chandrasekharan with an "aruval", which is a type of a "billhook" and

- A Govindaraj with an iron rod. The number of injuries on the head of the deceased is sufficient to conclude the nature of murderous assault made by all the appellants. No suggestion was given to the witness that he was not present at the time of assault and that he was not injured in the same occurrence. It establishes his credibility and reliability as an eye witness speaking the truth. Since he was an eye witness to the assault which took place in broad daylight, and the number of injuries makes it evident that it continued for some time, there is nothing suspicious in his evidence when he describes the manner, nature and weapon of assault by each of the appellants.

- C 10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 observing as follows:

- D "28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

- E 11. The failure of the prosecution to place the injury report of the witness from the Udumalpet Government Hospital, where he was first taken for treatment is a lacuna, but cannot be held to be fatal as to doubt the entire prosecution case or shake the credibility of the witness. It cannot lead to any conclusion of his injury report, Exhibit P-6 from the Ramakrishna Hospital being fabricated. No such suggestion was made by the defence to PW-12 Dr. Krishnaraj. The appellants are named in the FIR registered soon after the occurrence. The fact that the witness may have stated of assault by two known persons to PW-12, without naming any of the appellants is inconsequential. The Doctor was a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. The observations in *Pattipati Venkaiah v. State of A.P.*, (1985) 4 SCC 80 as follows are considered relevant:
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- H "17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only

stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

12. The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony. It may only call for greater scrutiny and caution in consideration of the same. The animosity of the appellants was primarily with the deceased on account of his acquittal the previous day, in the criminal prosecution. The transfer of lands by the deceased in favour of the witness, being a completed transaction, is considered too remote a circumstance for enmity between the appellants and the witness as a ground for false implication. In any event, because of the reliable ocular evidence available, motive loses much of its relevance in the facts of the case.

13. PW-1 Lalbahadur Sastri deposed that on the fateful morning he along with PW-2 Lakshmi and PW-3 Udayachandran and the deceased came together to the fields on two motor cycles. Evidently, he did not see either of the latter witnesses at that time as they may have been behind the car parked facing South. PW-2 Lakshmi also deposed that they all came to the fields together on two motor cycles along with the deceased. PW-1 Lalbahadur Sastri left to deliver milk and returned after doing so when the attack took place. The two witnesses at that time were in the residential shed and came running on hearing cries of distress. The fact that PW-2 Lakshmi and PW-3 Udayachandran were also eye witnesses to the occurrence therefore stands well established. PW-2 Lakshmi being the wife of the deceased, we find no reason why she would not be speaking the truth with regard to the real assailants instead of shielding them by false implication. The fact that she had the courage to name her own in-laws as the assailants is also a factor which speaks of the reliability of her evidence. The Trial Judge has rightly believed

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A them to be eye-witnesses. PW-4 Ramachandran, the astrologer, an independent witness, referred to by PW-3 Udaychandran as also having been present deposed of the appellants attacking the deceased. The fact that in his cross-examination he may have stated that he was not aware how the appellant and PW-1 Lalbahadur Sastri sustained injuries cannot classify him either as a hostile or completely unreliable witness.

B 14. The appellants came together armed with a hammer, sickle and iron rod respectively. They assaulted the deceased indiscriminately on the head repeatedly, a very sensitive part of the human body reflecting the individual intention of each one of them to ensure the death of the deceased. The number of injuries caused on the head speaks for itself

C regarding the intention of the appellants. There is no need for us to consider and examine issues of common intention, in the facts of the case.

D 15. In view of the clear ocular evidence available, issues with regard to the confession statement and recovery of the weapons of assault need not be considered for corroboration.

E 16. In the facts and circumstances of the case, we, therefore, find no reason to interfere with the conviction of the appellants. Their bail bonds are cancelled and they are directed to surrender forthwith for serving out their remaining period of sentence. The appeals are dismissed.

Nidhi Jain

Appeals dismissed.