A BALRAJE @ TRIMBAK

v.

STATE OF MAHARASHTRA

(Criminal Appeal No.1978 of 2008)

MAY 10, 2010

B

[P. SATHASIVAM AND H.L. DATTU, JJ.]

Penal Code, 1860: s.302 – Single knife blow on vital part i.e. chest of the deceased caused by appellant resulting in C *death of deceased – Conviction of appellant under s.302 by courts below – Interference with – Held: Not called for – There were categorical statements of eye-witnesses proving the involvement of appellant in the offence – Acquittal of other co-accused would not affect the conviction of appellant as* D *there was cogent, credible and truthful evidence of witnesses against him – Evidence.*

Evidence: Testimony of related/interested/injured witnesses – Evidentiary value of.

E **Prosecution case was that there was enmity between the family of the appellant-accused and the family of the deceased. On the fateful day, at 11.30 p.m. when deceased was sleeping in his house, appellant called the deceased to open the door. When the deceased opened** F **the door, his wife PW-2 also followed him. Appellant pulled deceased out and gave knife blow on his chest. On hearing the commotion, PW-1 residing on the first floor of the same building came down. Appellant inflicted a knife blow on his leg. A-4 also inflicted blow on the** G **chest of the deceased. The three other accused beat the deceased with wooden pieces. Thereafter appellant and the other accused persons ran away in a jeep. The deceased and PW-1 were taken to the hospital. Deceased died at 3.30 a.m. The Trial Court convicted the appellant**

H

and the three other accused under Sections 302/34 IPC. High Court dismissed the appeal in respect of the appellant and allowed the appeal of the other three accused persons. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1. The evidences of PW-1, PW-2 and PW-4 clearly proved the involvement of the appellant. Though some of the witnesses turned hostile, it did not affect the prosecution case because of the clear and categorical statements of PWs 1, 2 and 4. Taking note of the fact that the name of the appellant was mentioned in the earliest report i.e. FIR and evidence of PW-1, PW-2 and PW-4, the High Court was fully justified in accepting the case of the prosecution in so far as the appellant was concerned. [Paras 10, 11] [773-B-D]

Baul v. State of U.P. **1968 (2) SCR 450, distinguished.**

Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P. **(2006) 2 SCC 450;** *Dinesh Kumar v. State of Rajasthan* **(2008) 8 SCC 270, referred to.**

2. In view of the fact that one blow was on the vital part i.e. chest and the deceased died due to the said injury, the courts below were fully justified in convicting him under Section 302 and imposing life sentence. [Para 12] [744-A-B]

3. The witnesses examined on behalf of the prosecution, whose testimony was relied upon, clearly deposed that appellant assaulted the deceased with a knife. In his examination under Section 313 Cr.P.C. a specific question was put to the appellant and he was made aware of the basic ingredients of the offence and the main facts sought to be established against him were explained to him. Thus, he can be convicted under Section 302 IPC for having committed the murder. Law

A is fairly well settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that B the witnesses were related to the deceased cannot be a ground to discard their evidence. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it C would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who D are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence. The High Court found that the role ascribed to E the others was not fully satisfied. The conclusion arrived at by the High Court is upheld. [Paras 13, 14] [774-C-H; 775-A-C]

Radha Mohan Singh @ Lal Saheb & Others vs. *State of* F *U.P.* (2006) 2 SCC 450, relied on.

Case Law Reference:

1968 (2) SCR 450	distinguished	Para 12
G (2006) 2 SCC 450	referred to	Para 12
(2008) 8 SCC 270	referred to	Para 12
(2006) 2 SCC 450	relied on	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal H No. 1978 of 2008.

From the Judgment & Order dated 17.04.2008 of the High Court of Judicature at Bombay bench at Aurangabad in Criminal Appeal No. 310 of 1997.

U.U. Lalit, Nitin Sangra, Chinmay A. Khalakkar, Chandan Ramamurthi for the Appellant.

Sankar Chillarge, Asha Gopalan Nair for the Respondent.

The Judgment of the was delivered by

P. SATHASIVAM, J. 1. This appeal is directed against the final judgment and order dated 17.04.2008 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 310 of 1997 whereby the High Court dismissed the appeal of the appellant confirming his conviction and sentence awarded by the Sessions Judge, Beed in Sessions Case No. 131 of 1996 on 11.09.1997.

2.The case of the prosecution is as under:

(a) The deceased-Kailas was residing in Bedre Galli at Georai along with his family. The house of appellant-accused is opposite to the house of the deceased. There was enmity between the family of the appellant-accused and the family of the deceased. It is said that they were on inimical terms with each other. On 21.07.1996, at about 11.30 p.m., when Kailas was sleeping in the front room of his house, his wife Kausalyabai (PW-2) and their children were sleeping in the rear side of the room, Balraje - the appellant had called the deceased to open the door. On hearing the noise of opening the door by Kailas, his wife followed him. When Kailas opened the door, Balraje pulled him out by holding his banian, as a result the banian was torn and came into the hands of Balraje which he threw away and then he gave a knife blow on the chest of Kailas. Thereafter, Kailas started running towards upstairs and called Rameshwar Burande (PW-1), who was residing on the first floor of the building. On hearing the commotion,

A Rameshwar (PW-1) started coming down. Balraje inflicted a knife blow on the leg of PW-1 and made him to fall on the ground. Sherya Mote (A-4) also inflicted blow on the chest of Kailas and he was thrown on the ground from the steps. The other three persons beat Kailas with wooden
B pieces. On hearing shouts, people gathered and the appellant along with three persons ran away in a jeep which was brought by them. The neighbours had taken Kailas and Rameshwar (PW-1) to the hospital at Georai in a Auto Rickshaw. Dr. Talwadkar, (PW-17), after giving first aid,
C referred them to the Civil Hospital at Beed as he found that the condition of the injured was critical. Then they were carried to the Civil Hospital, Beed in a jeep. Kailas died in the Civil Hospital between 3.00 to 3.30 a.m

(b) The complaint of PW-1 was recorded in the Civil
D Hospital, Beed which is Ex. 35. On the basis of the said complaint, FIR was registered with the Police Station, Beed, for the offences punishable under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code. The said complaint was then forwarded to the Police
E Station, Georai. P.I. Kendre, PW-19, had received the complaint filed by PW-1 at about 9.30 a.m. on 22.07.1997. On the basis of the said complaint, P.S.I. Gajare registered Crime No. 132/96 and handed over the investigation to P.I. Kendre (PW-19). PW-19 went to the
F place of incident and had drawn a panchnama of place of offence (Ex.54). During the Panchanama, he noticed blood stained mattress, pillow, bed sheet, torn piece of banian, one chappal and a piece of wood were lying on the spot. He then went to the house of Balraje – the appellant herein
G in his search but he was not there. During his visit to the house, he found that one jeep was parked in the premises and there were blood stains in the jeep. He then attached the said jeep under panchanama as Ex.55. In the said jeep, he found a piece of plank used in the assault and one
H slipper. He had also seized a piece of stepney and pieces

of seat covers which were stained with blood in order to send it to the chemical analyzer. A

(c) Initially the crime was registered for an offence punishable under Section 307 of the IPC but later on it was converted to Section 302 of the IPC. After the death of Kailas, the panchanama of the inquest of the dead body was prepared which was filed as Ex.29. The clothes which were on the dead body were seized and placed as Ex.30. The postmortem on the dead body was conducted by Dr. Sudam Mogale (PW-3). The clothes of PW-1 were also seized. On 25.07.1996, Balraje - the appellant herein and Suresh Mote A-2 were arrested while they were traveling in a car. The said car was also attached under panchanama Ex. 43. The Investigating Officer found one receipt of Hotel Manor, Aurangabad from the car which shows that accused had stayed in the said hotel in the night of 22.07.1996. On 26.07.1996, during the interrogation, the appellant made a statement that the weapon used by him in the assault was concealed by him at a particular place and he would take it out if the panch witnesses and police accompany him. Thereafter, they went in a police jeep and the appellant took out one knife which was kept beneath Ashoka tree. There were blood stains on the said knife. On 31.07.1996, police interrogated Kailas (A-4) also and during the said interrogation he made a statement that he concealed the knife in the field. Thereafter, the police got the knife from that place. On 05.08.1996, P.I. Kendre (PW-19) then requested the Naib Tehsildar for preparing the sketch map of the place of incident and the map was prepared which is filed as Ex.61. B C D E F G

(d) On 13.02.1997, charges were framed against the accused persons for the offences punishable under Sections 147, 148, 324, 302 read with Section 149 I.P.C. The prosecution had examined 19 witnesses and recorded their evidence. The Sessions Judge, Beed, by order dated H

A 11.09.1997 convicted the appellant and three other accused, namely, Suresh Mote, Dutta Kale and Kailas @ Shreya Bhagwan Mote guilty for the offence punishable under Section 302/34 IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1000/- each, B in default, to undergo R.I. for one month under Section 235(2) of the Code of Criminal Procedure.

(e) Challenging the said judgment and order of conviction and sentence, the appellant and the other three accused filed Criminal Appeal No. 310 of 1997 before the High C Court. The High Court by the impugned judgment and order dated 17.04.2008 dismissed the appeal in respect of appellant thereby confirming the conviction and sentence of the appellant and allowed the appeal in respect of the other three accused acquitting them from D the charge of offence under Section 302/34 IPC. Aggrieved by the said judgment, the appellant has filed this appeal by way of special leave petition before this Court.

3. Heard Mr. U.U. Lalit, learned senior counsel for the E appellant and Mr. Sankar Chillarge, learned counsel for the respondent-State.

4. Learned senior counsel for the appellant after taking us through all the relevant materials contended that the High Court has committed an error in upholding the conviction of the F appellant when on the same set of evidence the other accused were acquitted by the High Court. He also submitted that when the alleged eye-witnesses Rameshwar Burandi, (complainant) PW-1 and Rekha Gire PW-4 narrated about the prosecution story, the High Court having disbelieved their version in respect G of others, erroneously relied the same in the case of the appellant while upholding the conviction and sentence. He further pointed out that PW-1, PW-2 and PW-4 are not eye-witnesses considering the spot panchnama. He also submitted that in view of material contradiction and omissions in the H alleged prosecution witnesses, the Courts below are not

justified in confirming the conviction of the sentence of the appellant alone. On the other hand, learned counsel appearing for the respondent-State by taking us through the prosecution witnesses and documents submitted that the Courts below were justified in relying on the evidence of Rekha Gire (PW-4), Raghunath (PW-12), and Bharat (PW-10) who are residing in the adjacent houses in addition to PW-1 & PW-2, eye witnesses. He further pointed out that certain discrepancies even, if any, are minimal and it had not affected the prosecution case.

5. We have perused the relevant materials and considered the rival contentions.

6. Among the witnesses examined on the side of the prosecution, Rameshwar Burande (PW-1), son of the deceased, Kausalyabai (PW-2) and Rekha Gire (PW-4) are material eye-witnesses proving the involvement of the appellant. According to PW-1, on the fateful night between 11:30 to 12:00, on hearing cries of PW-2, he woke up and noticed the appellant-Balraje dragging Kailas from the house and inflicted blow with knife on the abdomen. He also explained that in order to escape from the accused, he started running towards upstairs. In order to help the deceased while he was climbing down the staircase, two persons pulled him down by holding his legs and gave one blow with some sharp weapon on his legs, as a result, he fell injured at the bottom of the staircase. The presence of Rameshwar Burande (PW-1) at the place of incident cannot be disbelieved. Added to it, he also sustained injuries in the incident.

7. One Raghunath Bedre, step-brother of the deceased Kailas and neighbor was examined as PW-12. He explained that the father and grand-father of the appellant were residing in the opposite house till 1990. He further deposed that on the date of the incident, he heard cries around 11:30 p.m. and immediately he woke up. He opened the door of his house and came out and saw the appellant and three others standing on

A the road holding knives and sticks in their hands.

8. According to Kausalyabai (PW-2), she was at the house at the relevant time with her husband and at about 11.30 p.m. when they were asleep there was a call from outside, "Kailas open the door" and, thereafter, Kailas went and opened the door B and she followed him. At that time, the accused asked him to come out, but Kailas was not ready and, therefore, accused caught hold of baniyan of Kailas and dragged him out of the house and inflicted blow with knife on the abdomen. She also explained that in order to escape from the accused her husband C started running towards upper storey by the staircase and called PW-1 for help and while he (PW-1) was climbing down the staircase to help the deceased, two persons pulled him down by holding his legs and gave one blow on his legs, as a result, he fell injured at the bottom of the staircase.

D

9. The evidence of PW-2 is supported by the evidence of Rekha Gire (PW-4). In her evidence, PW-4 explained that she was residing with her husband Dilip Dire in the house adjacent to the house of the deceased. She asserted that she knew the E appellant since childhood. According to her, on the night, since her husband had gone to his native place while she was sleeping, she heard a noise of jeep at about 11:00-11:30 p.m. and she opened the door on the belief that her husband had arrived. But, appellant and four others alighted from the jeep, F entered the house of the deceased and asked him to open the door. She further narrated that the appellant pulled out the deceased by holding his baniyan and stabbed Kailas, the deceased, with knife. Kailas was running towards upstairs by calling Rameshwar Burande PW-1. She further explained that though other four accused also ran along with the appellant, it G was appellant-Balaraje who inflicted one more knife blow on the person of Kailas while he was lying on the ground and thereafter, all the assailants went away in the jeep. Moreover, Rekha Gire (PW-4), among the persons who alighted from the jeep, identified only the appellant. She also explained how the

H

deceased being thrown on the ground while he was trying to climb the staircase, appellant giving blow with knife on the abdomen and the other accused giving blow with knife on the chest. A

10. The analysis of evidences of PW-1, PW-2 and PW-4 clearly prove the involvement of the appellant-Balraje. Though some of the witnesses turned hostile it had not affected the prosecution case because of the clear and categorical statements of PWs 1, 2 and 4. Since all the three identified the appellant and his name find place in the First Information Report itself lodged by PW-1, the High Court has rightly confirmed his conviction and sentence. B C

11. It is true that the prosecution has implicated four persons in the commission of offence. The material witnesses PW-1, PW-2 and PW-4 specifically asserted and identified the role of the appellant alone. Taking note of the fact that his name was mentioned in the earliest report i.e. FIR and evidence of PW-1, PW-2 and PW-4, we are of the view that the High Court is fully justified in accepting the case of the prosecution in so far as the appellant is concerned. D E

12. Mr. Lalit, learned senior counsel for the appellant submitted that in view of the fact that there was only one injury on the deceased alleged to have been caused by the appellant, the Court is not justified in convicting and sentencing him under Section 302. In other words, according to him, even if the prosecution case is accepted, conviction and proper sentence would be only under Section 325 for which he relied on decision of this Court *Baul vs. State of U.P.* reported in 1968 (2) SCR 450. On the other hand, Mr. Sankar Chillarge, learned counsel for the State submitted that in view of categorical statements of PWs-1, 2, 4 and 11 coupled with the post-mortem report, conviction under Section 302 is appropriate and sentence awarded is maintainable for which he relied on *Radha Mohan Singh @ Lal Saheb & Ors. vs. State of U.P.* (2006) 2 SCC 450 and *Dinesh Kumar vs. State of Rajasthan* (2008) 8 SCC F G H

A 270. As discussed above, and in view of the fact that one blow is on the vital part i.e. chest and the deceased died due to the said injury, the Court is fully justified in convicting him under Section 302 and imposing life sentence. Since we have already discussed the evidence of those persons in the earlier part of
B our order, there is no need to refer the same once again. In view of the factual details, the decision relied on by Mr. Lalit is distinguishable and not applicable to the case on hand.

13. Learned senior counsel for the appellant submitted that having framed charges against all the accused and after
C acquittal of all the accused except the appellant, the same cannot be sustained. We are unable to accept the said contention. As observed in *Radha Mohan Singh @ Lal Saheb & Others vs. State of U.P.* (2006) 2 SCC 450, in view of Section 464 Cr.P.C. it is possible for the appellate or revisional
D court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that failure of justice would in fact occasion. In the present case, the witnesses examined on behalf of the prosecution, whose testimony has been relied upon, clearly deposed that appellant
E has assaulted the deceased with a knife. In his examination under Section 313 Cr.P.C. a specific question was put to the appellant and he was made aware of the basic ingredients of the offence and the main facts sought to be established against him were explained to him. Thus, he can be convicted under
F Section 302 IPC for having committed the murder.

14. Law is fairly well settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be
G recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted
H

that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence. In our case, as observed earlier, the Trial Court and the High Court have analysed the testimony of PWs 1, 2 and 4 in great detail. It is revealed that the appellant had inflicted the first blow on the deceased in his chest and he fell on the ground. The High Court found that the role ascribed to the others was not fully satisfied.

15. In the light of the discussion we do not find any merit in the appeal, on the other hand, we are in agreement with the conclusion arrived at by the High Court, consequently, the appeal fails and the same is dismissed.

D.G. Appeal dismissed.