2000 Supreme Court Cases (Cri) 1416

(BEFORE K.T. THOMAS AND R.P. SETHI, JJ.)

HUKAM SINGH AND OTHERS .. Appellants;

Versus

STATE OF RAJASTHAN .. Respondent.

Criminal Appeal No. 261 of 1998†, decided on September 14, 2000

A. **Criminal Trial — Witnesses — Related witnesses — Testimony of, cannot be disbelieved merely on ground that they are interested witnesses**

Held :

The trial court erred in refusing to believe the testimony of the close relatives of the deceased by dubbing them as "interested witnesses". They cannot be termed as interested witnesses. If they had seen the occurrence they would certainly have an interest in bringing the offenders of the murder of their breadwinner to book. Normally the kith and kin of the deceased, if they had seen the occurrence would not absolve the real offenders and involve innocent persons in that murder. (Para 7)

Dalip Singh v. *State of Punjab*, AIR 1953 SC 364 : 1954 SCR 145 : 1953 Cri LJ 1465; *Guli Chand* v. *State of Rajasthan*, (1974) 3 SCC 698 : 1974 SCC (Cri) 222; *Dalbir Kaur* v. *State of Punjab*, (1976) 4 SCC 158 : 1976 SCC (Cri) 527, *relied on*

B. **Criminal Procedure Code, 1973 — Ss. 226, 231 and 225 — Public Prosecutor is not bound to examine all the witnesses including even those who, according to his information, would not support the prosecution case — Although Public Prosecutor should prefer to examine those witnesses who are not related to the victim instead of those who are related to the victim but if he comes to know that any of the non-related victims would not support the prosecution version, he may drop such witness from being examined — Public Prosecutor has to take decision in that regard in a fair manner — He can interview the witnesses beforehand to know in advance the stand to be taken by the witnesses — Criminal Trial — Prosecution — Failure to examine witnesses — Discretion of Public Prosecutor**

In the first information statement PW 4 mentioned that two persons had also seen the incident. The investigating officer included those two persons as witnesses to the occurrence when the final report was laid. But in the Sessions Court they were not examined by the Public Prosecutor. The Sessions Judge frowned at the prosecution for not examining those witnesses. The High Court noted that non-examination of those witnesses was due to an application submitted by the Public Prosecutor that those two witnesses did not support the prosecution version.

Held :

In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knows at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution. (Para 12)

† From the Judgment and Order dated 5-9-1997 of the Rajasthan High Court in DB Crl. A. No. 443 of 1982

When the case reaches the stage envisaged in Section 231 of the Code the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone. That principle also applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. It is open to the Public Prosecutor to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. (Para 13)

The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court. (Para 14)

Dalbir Kaur v. *State of Punjab*, (1976) 4 SCC 158 : 1976 SCC (Cri) 527; *Masalti* v. *State of U.P.*, AIR 1965 SC 202 : (1965) 1 Cri LJ 226; *Bava Hajee Hamsa* v. *State of Kerala*, (1974) 4 SCC 479 : 1974 SCC (Cri) 515 : AIR 1974 SC 902; *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, *relied on*

C. **Penal Code, 1860 — Ss. 302, 201 and 149 & 34 — Common object — After one of the accused fired pistol shot hitting the deceased on his back, other accused, who were variously armed, inflicted blows on the fallen victim and all the accused dragged the dead body and set it ablaze — Held on facts, all the accused had the common object of finishing the deceased**

It was contended that even if two of the accused were found responsible for the murder of the deceased that would not warrant any need to tag the remaining appellants with the murder of the deceased by means of either Section 149 or Section 34 IPC. It was argued that if the acts attributed to them (that they dragged the deceased up to their chowk and put his body on the pyre and set him ablaze) are true, the offence of which they are liable to be convicted cannot escalate beyond Section 201 IPC. Rejecting the contention

Held :

In this case the role played by each of the accused-appellants can be discerned with a reasonable degree of certainty. Starting with their convergence at the bus-stop, presumably waiting for the return of the deceased after his day's work, the fact that all were variously armed, the fact that they all joined together in inflicting blows on the fallen victim and also on his wife and son who rushed to the rescue of their breadwinner, and the fact that they all jointly dragged the deceased up to the pyre and set him ablaze are very material in deciding whether they all had the common object of liquidating the deceased on that very evening. (Para 18)

All the appellants are liable to be convicted of the offences found against them. (Para 11)

Appeal dismissed R-M/TZ/23043/CR

Advocates who appeared in this case :
U.U. Lalit, Ajay Siwach and S.K. Sabharwal, Advocates, for the Appellants;
Ms Anjali Doshi, Sushil Kr. Jain and A. Mishra, Advocates, for the Respondent.

Chronological list of cases cited *on page(s)*

1. (1976) 4 SCC 158 : 1976 SCC (Cri) 527, *Dalbir Kaur* v. *State of Punjab* 1419*g*, 1422*a*
2. (1974) 4 SCC 479 : 1974 SCC (Cri) 515 : AIR 1974 SC 902, *Bava Hajee Hamsa* v. *State of Kerala* 1421*g*
3. (1974) 3 SCC 698 : 1974 SCC (Cri) 222, *Guli Chand* v. *State of Rajasthan* 1419*g*
4. (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, *Shivaji Sahabrao Bobade* v. *State of Maharashtra* 1421*g*
5. AIR 1965 SC 202 : (1965) 1 Cri LJ 226, *Masalti* v. *State of U.P.* 1421*e-f*
6. AIR 1953 SC 364 : 1954 SCR 145 : 1953 Cri LJ 1465, *Dalip Singh* v. *State of Punjab* 1419*f-g*

The Judgment of the Court was delivered by

THOMAS, J.— The killers of an advocate's clerk arranged a funeral pyre by themselves and cremated the victim in the sight of his bereaved widow and son. Police charge-sheeted six persons including the appellants for those acts. But the Sessions Court acquitted them all. As the High Court reversed the order of acquittal as against the appellants and convicted them for murder they filed this appeal as of right under Section 379 of the Code of Criminal Procedure (for short "the Code"). We heard detailed arguments of Shri Uday Umesh Lalit, advocate for the appellants and Ms Anjali Doshi, advocate for the State of Rajasthan.

2. Munshi Singh was an advocate's clerk who was murdered in the vicinity of his own house by using a pistol and other lethal weapons at about 7 p.m. on 29-6-1981. The prosecution case is the following:

The appellant Hukam Singh (who was ranked as A-1 in the trial court) and his brother Harnam Singh (A-5) and the latter's sons Jaswant Singh (A-2) and Balwant Singh (A-4) had some axe to grind against the deceased Munshi Singh. On the evening of the fateful day Munshi Singh alighted from a bus near his house and was proceeding to his house. His son Bhupender Pal (PW 4) took over a bag of cattle-feed which his father brought from the bazaar and he too was walking a little ahead of his father. All the appellants were at the bus-stop variously armed. On sighting the deceased one among the appellants (Hukam Singh) made an exhortation to finish him off and then Darshan Singh (who died before the trial started) fired his pistol which hit the deceased on his back. He slumped down on the spot.

3. Seeing the above mishap befallen his father PW 4 Bhupender Pal rushed to rescue him. Munshi Singh's wife on hearing the commotion flew down from her house and reached her husband. All the accused assaulted both of them as well as the deceased. Then the assailants dragged the deceased along the ground and brought him to their courtyard. They made a pyre with firewood splinters and put the body of Munshi Singh on it and set it ablaze while his wife and son were looking on aghast.

4. The police was alerted and they reached the spot but to find only the burnt remains of Munshi Singh and the smouldering embers of the dying pyre. They extinguished the flames and salvaged whatever remained of the corpse. A team of doctors conducted post-mortem examination among whom PW 8 Dr Rajendra Kumar gave evidence that the dead body had reached such a stage of burnt condition that it was impossible to form an opinion regarding the cause of death. However, they recovered a metallic substance from the skeleton which could be the embedded remnant of firing from a pistol.

5. Hukam Singh, when examined by the Sessions Judge under Section 313 of the Code admitted that he had killed the deceased. But he advanced a contrary version like this:

He and Darshan Singh saw the deceased grappling with Bharama Bai and the lady was crying. Then Darshan Singh fired at the molesting Munshi Singh. When his son Bhupender Pal (PW 4) and his wife Ram Pyari (PW 5) reached the spot Hukam Singh and his associates forcibly prevented them from removing Munshi Singh from the spot. He also admitted that the dead body of Munshi Singh was subsequently cremated by them.

6. Neither the Sessions Court nor the High Court found the said version of Hukam Singh to be true. He did not care to examine Bharama Bai nor make any attempt to substantiate the version put forward by him. The courts therefore did not attach any credence to the aforesaid belated version put forth by Hukam Singh at the fag end of the trial.

7. Bhupender Pal (PW 4) and Ram Pyari (PW 5) were the two eyewitnesses examined by the prosecution. The fact that they were present at the scene of occurrence could not be disputed nor has the same been disputed by the accused. They sustained injuries at the hands of the assailants and the doctor who noted such injuries had testified about them in the Court as PW 9. The version spoken of by PW 4 in court is substantially a reiteration of the version which he supplied to the police as early as 8.40 p.m. on the same night. That became the basis for the FIR. The Sessions Court refused to believe the testimony of those witnesses on the erroneous perception that they are "interested witnesses". The only premise for dubbing them as "interested witnesses" is that they were the kith and kin of the deceased. Why should such witnesses be termed as interested witnesses? If they had seen the occurrence they would certainly have the interest to bring the offenders of the murder of their breadwinner to book. Normally the kith and kin of the deceased, if they had seen the occurrence would not absolve the real offenders and involve innocent persons in that murder. (Vide *Dalip Singh* v. *State of Punjab*[1], *Guli Chand* v. *State of Rajasthan*[2] and *Dalbir Kaur* v. *State of Punjab*[3].)

8. Be that as it may, the promptitude with which the first information statement was lodged as done by PW 4 in this case, gives such an assurance that he would have told the police the true version of the incident.

1 AIR 1953 SC 364 : 1954 SCR 145 : 1953 Cri LJ 1465
2 (1974) 3 SCC 698 : 1974 SCC (Cri) 222
3 (1976) 4 SCC 158 : 1976 SCC (Cri) 527

9. In the first information statement PW 4 mentioned that one Inder Singh and one Budh Ram Nayak had also seen the incident. The investigating officer included those two persons as witnesses to the occurrence when the final report was laid. But in the Sessions Court they were not examined by the Public Prosecutor. The Sessions Judge frowned at the prosecution for not examining those witnesses. The High Court noted that non-examination of those witnesses was due to an application submitted by the Public Prosecutor that those two witnesses did not support the prosecution version. Regarding that aspect learned Judges of the High Court made the following observations:

> "In our opinion, it is the discretion of the Public Prosecutor to examine the witnesses, whom he likes. It is not necessary for the prosecution to examine each and every witness to prove a particular fact. When the Public Prosecutor came to know that Inder Singh and Budh Ram would not depose in favour of the prosecution, he was justified in giving them up by moving an application in the Court that the witness had joined hands with the accused. There was nothing wrong in the conduct of the Public Prosecutor. The fact that the two witnesses have not been examined, does not detract from the testimony of Ram Pyari and Bhupender Pal."

10. Shri Uday Umesh Lalit, learned counsel for the appellants made a criticism against the Public Prosecutor for not examining those two witnesses, as they were the only independent witnesses. Learned counsel contended that the Public Prosecutor cannot withhold the evidence of such independent witnesses in a case of this nature as the remaining witnesses were the close relatives of the deceased person. The discretion of the Public Prosecutor in choosing the witnesses for examination cannot include the freedom to keep away such independent witnesses from being examined, argued the counsel.

11. On the other hand, Ms Anjali Doshi, learned counsel who argued for the State submitted that the Public Prosecutor did not commit any impropriety in not examining those two witnesses. When he learnt that those two witnesses would speak against the prosecution version he sidestepped them and it is the prerogative of the Public Prosecutor not to examine such persons as prosecution witnesses; it is open to the Public Prosecutor to report to the court about his decision not to examine any person as prosecution witnesses particularly when he got report through his own sources that those witnesses were won over by the accused, according to the learned counsel for the State.

12. In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in

support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

15. A four-Judge Bench of this Court had stated the above legal position thirty-five years ago in *Masalti* v. *State of U.P.*[4] It is contextually apposite to extract the following observation of the Bench:

> "It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court."

16. The said decision was followed in *Bava Hajee Hamsa* v. *State of Kerala*[5] . In *Shivaji Sahabrao Bobade* v. *State of Maharashtra*[6] Krishna Iyer J., speaking for a three-Judge Bench had struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses he should be fair to

4 AIR 1965 SC 202 : (1965) 1 Cri LJ 226

5 (1974) 4 SCC 479 : 1974 SCC (Cri) 515 : AIR 1974 SC 902

6 (1973) 2 SCC 793 : 1973 SCC (Cri) 1033

the court and to the truth. This Court reiterated the same position in *Dalbir Kaur v. State of Punjab*[3].

17. Shri Uday Umesh Lalit alternatively contended that even if Hukam Singh and Darshan Singh are found responsible for the murder of Munshi Singh that would not warrant any need to tag the remaining appellants with the murder of the deceased by means of either Section 149 or Section 34 IPC. According to the learned counsel, if the acts attributed to them (that they dragged the deceased up to their chowk and put his body on the pyre and set him ablaze) are true, the offence of which they are liable to be convicted cannot escalate beyond Section 201 IPC.

18. We bestowed serious consideration to the above contention. If the evidence of PW 4 Bhupender Pal and PW 5 Ram Pyari is believable, the role played by each of the appellants can be discerned with a reasonable degree of certainty. It is not as minor as sought to be dubbed by the learned counsel. Starting with their convergence at the bus-stop, presumably waiting for the return of the deceased after his day's work, the fact that all were variously armed, the fact that they all joined together in inflicting blows on the fallen victim and also on his wife and son who rushed to the rescue of their breadwinner, and the fact that they all jointly dragged the deceased up to the pyre and set him ablaze are very material in deciding whether they all had the common object of liquidating the deceased on that very evening.

19. On a scrutiny of the evidence and consideration of the arguments seriously pressed into service by the learned counsel, we have no reason to dissent from the finding arrived at by the Division Bench of the High Court that all the appellants are liable to be convicted of the offences found against them. We, therefore, affirm the conviction and sentence passed on them and dismiss this appeal.