NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1839 OF 2010

Md. Rojali Ali & Ors. **.....Appellants**

Versus

The State of Assam , **.....Respondent**
Ministry of Home Affairs through
the Secretary

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

In this most unfortunate and beastly incident, four persons fast asleep in their home in the early hours of the morning, oblivious to their imminent fate, were mercilessly murdered in a barbaric manner by the armed accused, without any instigation or provocation.

2. Against the concurrent judgments of conviction and sentence dated 29.04.2006 passed by the Additional Sessions Judge, Barpeta in Sessions Case No. 68/2001 and the judgment dated 5.3.2010 passed in Criminal Appeal No. 121 of 2006 passed by the Gauhati High Court, this appeal is presented by the convicted accused.

3. The case of the prosecution in brief is that 26 persons including the appellants herein, armed with deadly weapons like spears, arrows, lathis etc. surrounded the house of Md. Aziz Ali, Md. Kutub Ali, Md. Mamud Ali and Samir Ali at about 6.00 a.m. on 9.11.1995 and trespassed into their house, dragged them outside and then assaulted them. As a result of this, Md. Aziz Ali, Md. Kutub Ali, Md. Mamud Ali and Samir Ali (not mentioned as deceased in FIR) succumbed to the injuries sustained by them and one Md. Atar Ali was injured. Though 26 persons were arrayed as accused in the first information, the chargesheet came to be filed against 15 persons. During the course of the trial, one of the accused died, and two others absconded. Thus, the trial was held against 12 accused, 8 of whom are the appellants herein. The Trial Court after following due procedure convicted the appellants under Sections 148, 323 and 302 read with 149 of

the Indian Penal Code (for short, "the IPC"), and acquitted the other accused. The judgment of the Trial Court came to be confirmed by the High Court. Hence, the convicted accused are in appeal before us.

4. Shri Raj Kishore Chaudhary, appearing on behalf of the appellants, took us through the material on record, and contended that though there are six eye-witnesses to the incident in question, all these eye-witnesses are closely related to the family of the deceased. It was also contended that the motive for commission of the offence is very weak, only being to the effect that on the day before the incident, a minor quarrel took place between the parties because the bicycles of PW1, Md. Hanif Ali and accused Md. Saifuddin (absconding) collided with each other. Thus, according to the appellants, there was no intention on their part to commit the murder of the four deceased, and moreover that no weapons were recovered from them. It was further contended that the prosecution witnesses have suppressed the death of one Turen Ali, who was part of the group of the accused, and whose death occurred during the course of the same incident. In the same incident, six persons from the group of the accused were also injured. Thus according to the learned

Counsel for the appellants, the prosecution witnesses have not come before the Court with clean hands, inasmuch as they suppressed the origin and genesis of the incident.

Per contra, the advocate for the State argued in support of the judgment of the courts below.

5. It is not in dispute that in the case at hand, four persons have died viz., Md. Aziz Ali, Md. Kutub Ali, Md. Mamud Ali and Samir Ali, and that PW7 Atar Ali was injured in the same incident. The incident took place at about 6.00 a.m. on 9.11.1995 and the first information came to be registered at 8.30 a.m. on the same day. A counter first information was filed by one Promila Begum, wife of Turen Ali (deceased belonging to the group of the accused) on 11.11.1995 i.e. two days after the date of the incident in question. In the said counter case, the trial went on separately in respect of the death of Turen Ali and the injuries sustained by the other six persons (accused herein). Thus, there were cases and counter cases related to the incident in question. Since the case at hand has to be dealt with on the basis of the material on record on its own merit, we do not propose to make any comment in respect of the counter case.

6. As mentioned supra, there are several eye-witnesses, viz., PWs 1, 2, 3, 7, 8 and 9, and among them PW7 is the injured eye-witness. It is also not in dispute that they are inter se closely related to the deceased. PW5 and PW6 are the doctors who conducted the post-mortem examinations.

7. In view of the ample ocular evidence on record, the motive for commission of the offence may not be so significant in this matter.

8. PW7, the injured eye-witness testified that after hearing a hue and cry at about 5.00 a.m., he went to his courtyard and saw all the accused assaulting Md. Aziz Ali, Md. Kutub Ali, Md. Mamud Ali and Samir Ali. He specified the overt acts of each of the accused by deposing that Accused No.5 stabbed Aziz Ali with a spear; Accused No.12 assaulted Samir Ali with a lathi; Accused No.8 stabbed Samir Ali with a spear; Accused Saif (absconding) assaulted Kutub Ali using a heavy bamboo stick; Accused No.2 stabbed Kutub Ali with a spear; Accused No.1 and Accused No.9 assaulted Mamud Ali on the chest, etc. He also deposed that he himself was assaulted by Accused No.3. Though the prosecution cross-examined PW7 at length, his evidence remained unshaken.

Even in the cross-examination, PW7 has reiterated the incident in question without any blemishes.

9. The evidence of PW7 is fully supported by the evidence of the other eye-witnesses, i.e., PWs 1, 2, 3, 8 and 9. To satisfy our conscience, we have gone through the evidence of these witnesses as well. On examining the same, we find that the Trial Court and the High Court are justified in observing that these witnesses are trustworthy and reliable. We do not wish to burden this judgment by quoting the evidence of all these eye-witnesses, inasmuch as their evidence has been dealt with in detail by the Trial Court and the High Court, and the appreciation of the evidence by the Courts cannot be faulted by us in any manner. Having considered the evidence of all the eye-witnesses in detail, suffice it to say that the evidence of all of these eye-witnesses is consistent with the case of the prosecution with respect to all material particulars, and is credible and trustworthy. Their presence on the spot can also not be doubted as they are family members of the deceased, who could reasonably be expected to be in their respective houses at the relevant point of time, i.e., the early hours of the day, when they (as well as the deceased) could

be expected to have been asleep, and to be about to wake up and start their daily routine.

10. As regards the contention that all the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see ***State of Rajasthan v. Kalki***, (1981) 2 SCC 752; ***Amit v. State of Uttar Pradesh***, (2012) 4 SCC 107; and ***Gangabhavani v. Rayapati Venkat Reddy***, (2013) 15 SCC 298). Recently, this difference was reiterated in ***Ganapathi v. State of Tamil Nadu***, (2018) 5 SCC 549, in the following terms, by referring to the three-Judge bench decision in ***State of Rajasthan v. Kalki*** (supra):

> "14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested"..."

11. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in ***Dalip Singh v. State of Punjab***, 1954 SCR 145, wherein this Court observed:

> "26. 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..."

12. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in

Jayabalan v. Union Territory of Pondicherry, (2010) 1 SCC 199:

> "23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

13. In the instant matter, as already discussed above, we find the testimony of the eye-witnesses to be consistent and reliable, and therefore reject the contention of the appellants that the testimony of the eye-witnesses must be disbelieved because they are close relatives of the deceased and hence interested witnesses.

14. Furthermore, though the counsel for the appellants tried to convince the Court with regard to minor discrepancies in the evidence of the six eye-witnesses with respect to the manner in which the assault took place, such attempt remains futile and cannot be accepted, inasmuch as minor variations in the evidence of the witnesses are bound to occur in a case like the

one on hand, wherein a number of accused came in a group and assaulted a few persons suddenly and mercilessly, out of which a few died and others sustained injuries. We do not find any major contradiction in the evidence of the eye-witnesses. Their evidence is fully supported by the version of the doctors who conducted the post-mortem examinations.

15. It is relevant to note that PW8 and PW9 have clearly deposed about the death of Turen Ali, for which the counter case was lodged. Of course, the other eye-witnesses did not depose about the same. Since the evidence of the two prosecution witnesses named above reveals that the accused party had also sustained injuries and one of them had expired, we do not find any ground to conclude that the prosecution tried to suppress the origin and genesis of the incident.

16. The evidence clearly reveals that the accused are the aggressors who came in a group to the house of deceased, trespassed into their houses, dragged the deceased out and mercilessly assaulted the deceased with sharp spears, arrows and lathis. The incident had taken place at about 6.00 a.m., which suggests that all the accused came with the clear intention to commit the murder of the four persons in the early hours of

the day. The accused were armed with deadly weapons and they came with prior preparation and premeditation. There was no provocation by the deceased or by the injured. In view of the same, it cannot be said that there was no intention on the part of the accused to commit murder.

17. Having regard to the totality of the facts and circumstances of the case, we find no ground to interfere with the impugned judgment. Hence, the appeal is hereby dismissed.

.....J.
(L. Nageswara Rao)

.....J.
(Mohan M. Shantanagoudar)

New Delhi;
February 19, 2019.