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ALIL MOLLAH AND ANR.

v.

STATE OF WEST BENGAL

JULY 18, 1996

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[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

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*Evidence—Sole eye witness—Evidentiary value of—Conviction can be based on the testimony of a single eye witness if he is a wholly reliable witness—If single eye witness is only partly reliable there should be corroboration of his testimony before recording conviction—Murder—Conviction of accused based upon the single eye witness who was an employee of deceased—Legality of—Evidence suggesting that conduct of single witness was unnatural—Witness maintaining unexplained silence—Making delayed statement to the police and relatives of deceased—Not appearing before the Investigating Officer—No corroboration of his evidence from any other independent source—Held, such a*

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*witness was not wholly reliable—It was unsafe to rely upon his evidence.*

*Constitution of India, 1950 : Article 136.*

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*Appeal—Power of Supreme Court to re-appreciate evidence—Witness—Admission made by him in his cross-examination materially detracting from his reliability not at all noticed by the courts below thereby resulting in miscarriage of justice—Held, appreciation of his evidence by Courts below was not justified.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 400 of 1987.

From the Judgment and Order dated 29.4.87 of the Calcutta High Court in CrI. A. No. 353 of 1985.

M.N. Krishnamani and Mrs. Sarla Chandra for the Appellants.

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Ujjwal Banerjee and H.K. Puri for the Respondents.

S.A. Syed, for the Complainant.

The following Order of the Court was delivered :

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This appeal by special leave is directed against the judgment of the

High Court dated 29th April, 1987 upholding the judgment of the trial court dated 19th September, 1985 whereby the appellants were convicted for an offence under Section 302/34 IPC and sentenced to imprisonment for life.

On 4th February, 1982 at about 5.30 p.m. one Elem Bux Molla, owner of a brick kiln at Dhib Dhipa was on his way to Dhib Dhipa Bazar for taking tea and snacks when he was accosted by 4-5 persons, including the appellants herein. Appellant No. 1 fired upon him with his gun as a result of which he fell down. Appellant No. 2 slit the throat of Elem Bux with a knife and after raising slogans 'Inquilab zindabad' all the miscreants including the appellants fled away. According to the prosecution story PW-3 and PW 6, both employees of Elem Bux, witnessed the occurrence. Din Mohammad, PW.1, another employee of the deceased heard the sound of gun shots coming from the side of Dhib Dhipa Bazar and he ran towards that place from the field where he was working. On reaching Harwa-Lauhati Road he saw some 4-5 persons running away towards the north along Boalghata Road shouting slogans 'Inquilab Zindabad'. At a little distance he found his master Elem Bux lying in a pool of blood with his throat slit. Some other persons were present at a distance. PW. 3 was also seen there and then PW. 1 immediately rushed to Police Station Bangar and lodged First Information Report at about 8.30 p.m. In the First Information Report he stated that "some unknown miscreants" had committed the murder of Elem Bux. On receiving the information, the police officer on duty, PW. 12, after registering the formal First Information Report took up the investigation in hand. He left for the place of occurrence at about 10.00 p.m. On reaching the place of occurrence he found the dead body lying on the road. Many people had collected there. He seized a number of incriminating articles from the spot including some empty cartridges etc. He held inquest on the dead body of Elem Bux and sent the dead body for post-mortem examination. On completion of the investigation, charge sheet was filed against the appellants for an offence under Sections 302/34 IPC. The trial court, as already noticed, convicted them for the offence under Section 302/34 IPC and sentenced them to suffer life imprisonment. The appellants unsuccessfully challenged their conviction and sentence before the High Court.

Both the trial court and the High Court disbelieved PW. 6 Tassiruddin Molla whom the prosecution had set up as one of the eye witnesses.

A Both the courts, however, relied upon the testimony of Altab Molla, PW.3. The conviction of the appellants is based upon the testimony of a single eye witness, PW. 3. Both the courts found PW-3 to be a reliable witness and his evidence sufficient to convict the appellants.

B Learned counsel for the appellants submitted before us that PW. 3 was not a wholly reliable witness and his conduct was so unnatural that it would be unsafe to rely upon his testimony to uphold the conviction of the appellants. Learned counsel, in this connection, pointed out that though PW. 3 was an employee of the deceased, after seeing the ghastly assault on his master, he not only did not go to the police but did not even disclose what he had seen to anybody at his home or in the village or even at the place of his work till the next day and that too only after his statement was recorded by the police during the afternoon of the next day i.e. 5th February, 1982. Mr. Puri, learned counsel appearing for the respondent on the other hand argued that since PW.3 has been relied upon by both the trial court and the High Court, this court need not, in this appeal by special leave, go into the correctness of the findings recorded by the courts below on the basis of appreciation of evidence. It is submitted that from the evidence of PW.3 the offence against the appellants stood amply established.

E We have given our thoughtful consideration in the respective submissions made at the Bar.

F That the entire case revolves around and rests on the testimony of PW. 3 only is not in doubt. It is now well established that conviction can be based on the testimony of a single eye witness provided the court finds from the scrutiny of his evidence that he is a *wholly reliable witness*. Where, however, the court is of the opinion that the single eye witness is only partly reliable, prudence requires that corroboration of his testimony in material particulars should be sought before recording conviction. It is in the light of these well settled principles that we shall examine the testimony of PW. 3.

G On his own showing PW.3 was an employee of the deceased. He was present, according to his testimony, when the deceased was assaulted by the appellants. He admits that after committing the crime the appellants and their associates fled away. The witness, however, not only did not raise any alarm when his master was being assaulted, he did not go near his

employer even after the assailants had fled away to see the condition in which the employer was after having suffered the assault. According to him he got frightened and fled away to his home. He also admitted in his cross-examination that neither at his home nor in the village did he disclose what he had seen in the evening of 4th February, 1982 to any one. Though in the morning of the following day, the witness went to the brick fields of the deceased-employer and many of his co-employees were also present there, he admitted that he did not disclose the occurrence to anyone of them and went on to concede that even to the Manager of the brick-fields he gave the information about the occurrence only 2-3 days after the occurrence. His statement was recorded by the police on the next day in the afternoon. This conduct of the witness that he did not tell anyone about the occurrence till the next day appears to be rather unnatural and creates an impression that he had not witnessed the occurrence. The witness however tried to take shelter on the plea that he was "frightened" and therefore till he appeared before the police, he did not pick up courage to inform anyone either in the village or on the brick-fields regarding the occurrence. This plea does not impress us. From the statement of the investigating officer, PW.12, we find that after having visited the scene of occurrence, he went to the village where the witness resides, on the night of 4th February, 1982 and remained there till 5th February, 1982. It is not understandable why the witness who was in the village did not appear before the investigating officer, when he was camping in the village throughout the night or even the next morning. No explanation whatsoever has been offered by him. PW. 3, in view of his unexplained silence, delayed statement to the police and relationship with the deceased, therefore, does not appear to us to be a wholly reliable witness. There is no corroboration of his evidence from any other independent source either. In the absence of any corroboration of his testimony we find it rather unsafe to rely upon the evidence of PW. 3 only to uphold the conviction and sentence of the appellants. Indeed both the courts below have relied upon the statement of PW. 3 and found him to be a reliable witness but unfortunately neither the trial court nor the High Court have adverted to the admissions made by the witness in his cross-examination, which we have noticed above. Though this Court sitting in appeal by special leave does not normally re-appreciate the evidence, which has been appreciated by the two courts below unless there are compelling reasons but with a view to satisfy our judicial conscience we have examined the statement of PW. 3 critically and

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- A are of the opinion that the appreciation of his evidence by both the courts below was not proper as admissions made by him in his cross-examination which materially detracted from his reliability were not at all noticed by the courts below thereby resulting in miscarriage of justice. To perpetuate an error is no virtue but to rectify it is a compulsion of judicial conscience.
- B We find ourselves unable to agree with the findings recorded by the courts below with regard to the reliability of PW3. There is no corroboration of his evidence to connect the appellants with the crime. In our considered view, on the basis of critical analysis of the evidence on the record, we are of the opinion that the case against the appellants has not been proved beyond a reasonable doubt. Consequently, this appeal succeeds and is
- C allowed. The conviction and sentence of the appellants is hereby set aside. The appellants are on bail. Their bail bonds shall stand discharged.

T.N.A.

Appeal allowed.