CHITTAR LAL

*v.*

STATE OF RAJASTHAN

JULY 21, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Penal Code, 1860—Section 302—Murder—Conviction by courts below—Based on testimony of sole eyewitness—Other two witnesses having turned hostile—Justification of—Held: conviction justified as testimony of the eyewitness was credible.*

*Criminal Trial:*

*Non-mention of name of eyewitness in FIR—Effect of—Held, mere non-mention of the name does not render prosecution case fragile.*

*Evidence of sole eye-witness—Reliability on—Held, if the testimony of sole witness is found to be reliable, there is no legal impediment to convict the accused—It is the quality and not quantity of evidence which is necessary for proving or disproving a fact—Evidence Act, 1872—Section 134.*

**The appellant-accused was charged for having killed a person. The incident was witnessed by three eye witnesses. FIR was lodged by the son of the deceased. During trial two of the eye witnesses turned hostile and the trial court relying on the evidence of one eye witness convicted the appellant-accused under Section 302 IPC. High Court confirmed the conviction.**

**In appeal to this Court appellant contended that evidence of the eye-witness could not have been relied upon as his name did not find place in the FIR; that his evidence was not cogent and credible; that his presence at the spot of occurrence was doubtful as at the time of incident he was supposed to be in the examination hall; and that conviction could not have been based on the testimony of the sole eye-witness.**

**Dismissing the appeal, the Court**

**HELD:1. Evidence of the person whose name did not figure in the FIR**

A as witness does not perforce become suspect. There can be no hard and fast rule that the names of all witnesses more particularly eye-witnesses should be indicated in the FIR. Mere non-mention of the name of an eye-witness does not render prosecution version fragile. In the present case, the information was not lodged by an eye-witness. Mental condition of a person whose father has lost life inevitably gets disturbed. Explanation offered by witnesses for
B non-mention of PW's name is plausible. The statement of the eye-witness was recorded on the same date of incident, immediately after the investigation process was set into motion. [636-E-F]

2. It cannot be said that conviction should not have been made on the
C basis of a single witness's testimony. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of Evidence Act, 1872. Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of
D guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony
E is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. [636-F-H; 637-A-B]

*Mohamed Gugal Esa Mamasan Ger. Alalah* v. *The King,* AIR (1946) PC 3, referred to.

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*Vadivelu Thevar* v. *The State of Madras,* AIR (1957) SC 614; *Guli Chand and Ors.* v. *State of Rajasthan,* AIR (1974) SC 276; *Yahula Bhushan alias Vehuna Krishnan* v. *State of M.P.,* AIR (1989) SC 236; *Jagdish Prasad and Ors,* v. *State of M.P.,* AIR (1994) SC 1251 and *Kartik Malhar* v. *State of Bihar,* [1996] 1 SCC 614, referred to.

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3. Evidence of PW3 comes unscathed on the acid test of credibility and reliability and, therefore, there can be no justification in doubting his testimony. Factual aspect regarding his alleged appearance at examination has been elaborately analysed by both the trial Court and the High Court and it has been found that the eye-witness did not appear at the examination and
H his presence at the spot of occurrence has been established. [637-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 845 of 2002. A

From the Judgment and Order dated 8.10.2001 of the Rajasthan High Court in D.B. Crl. A. No. 225 of 1998.

Ms. Minakshi Vij for the Appellant. B

Ms. Sandhya Goswami, for the Respondent.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Conviction for offence punishable under Section 302, Indian Penal Code, 1860 (for short 'IPC') made by learned Sessions Judge, Kota, having been confirmed by a Division Bench of the Rajasthan High Court, Jaipur Bench, this appeal has been preferred by the accused. C

Factual scenario as unfolded during trial is as follows:

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On 26.4.1994, septuagenarian Lattor Lal (hereinafter referred to as 'the deceased') lost his life at about 7.30 a.m. He was going with his cows in front of one Madan Lal's house. Accused-appellant Chittar Lal gave him a knife blow resulting in instantaneous death. This incident was witnessed by Dhan Raj (PW3), Shiv Prakash (PW5), Nathu Lal (PW6) and others. Son of the deceased, Heera Lal (PW1) lodged the report at the police station at about E 8.15 a.m. On being told that accused was coming towards the house of Heera Lal (PW1), his mother closed the door. When he went to the roof, he saw accused who had a knife in his hand was running towards the hospital. He reached the spot and found his father dead. The background motive for the assault was said to be execution of a Will of one house by Moti Lal, father F of the accused in favour of his daughter Smt. Ganga Bai (PW16), who later on sold the house to Bharat Kumar (PW8) (brother of the informant). Accused did not like the transaction and had developed animus towards the deceased. On registration of the First Information Report, investigation was undertaken and charge sheet was filed. Post-mortem was conducted by Doctor (PW18), who found two stab injuries; one in pleural cavity along with fracture of mid G sternum V arranged and other 3/4" x 1/4" deep into abdominal cavity 4", 2" left to umbilicus. The case was committed to the court of Sessions Judge, Kota and trial was held by it. Prosecution examined 18 witnesses to further its version. Accused pleaded innocence.

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A During trial two witnesses who claimed to be eye-witnesses (PWs 5 and 6) made departure from the statements made during investigation. However, Dhanraj (PW3) implicated the accused.

The Trial Court relying on his evidence held the accused guilty of offence punishable under Section 302 IPC and sentenced to undergo
B imprisonment for life.

In support of the appeal, learned counsel for the appellant submitted that evidence of PW3 could not have been relied upon as his name did not find place in the FIR. Additionally on the sole testimony of a young boy of 15, the conviction could not have been made. The evidence of PW3 is not
C cogent and credible and lacks reliability. His presence at the spot of occurrence is doubtful. The incident was claimed to have taken place at about 7.30 a.m. when he was supposed to be in the examination hall. He was student of class VI and it is hard to believe that he secured 20 marks in the oral examination, as claimed by him. On the contrary it appears that the marks were secured
D by him at the examination held on that date. If he appeared at the examination; question of his having seen the incident does not arise.

None appeared for the State of Rajasthan when the matter is called.

Evidence of the person whose name did not figure in the FIR as witness
E does not perforce become suspect. There can be no hard and fast rule that the names of all witnesses more particularly eye-witnesses should be indicated in the FIR. As was observed by this Court in *Shri Bhagwan* v. *State of Rajasthan,* [2001] 6 SCC 296 mere non-mention of the name of an eye-witness does not render prosecution version fragile. The information was not lodged by an eye-witness. Mental condition of a person whose father has lost life inevitably
F gets disturbed. Explanation offered by witnesses for non-mention of PW3's name is plausible. Additionally it is to be noted that in the present case the statement of PW3 was recorded on the same date of incident, immediately after the investigation process was set into motion. Therefore, the plea that PW3's testimony is doubtful lacks substance. The other plea was that
G. conviction should not have been made on the basis of a single witness (PW3)'s testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime
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has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is *Mohamad Gugal Esa Mamasan Ger Alalah* v. *The King,* AIR (1946) PC 3. The Privy Council focused on the difference between English Law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of Evidence Act. The view has been echoed in *Vadivelu Thevar* v. *The State of Madras,* AIR (1957) SC 614, *Guli Chand and Ors.* v. *State of Rajasthan,* AIR (1974) SC 276, *Vahula Bhushan alias Vehuna Krishnan* v. *State of Tamil Nadu,* AIR (1989) SC 236, *Jagdish Prasad and Ors.* v. *State of M.P.*, AIR (1994) SC 1251 and *Kartik Malhar* v. *State of Bihar,* [1996] 1 SCC 614.

Evidence of PW3 comes unscathed on the acid test of credibility and reliability and, therefore, there can be no justification in doubting his testimony. Factual aspect regarding his alleged appearance at examination has been elaborately analysed by both the Trial Court and the High Court and it has been found that PW3 did not appear at the examination and his presence at the spot of occurrence has been established. That being the position, the said plea of the accused-appellant also fails. Though there was no appearance on behalf of the State of Rajasthan, Ms. Minakshi Vij who has appeared as amicus curiae very fairly placed the entire material on record for consideration, and we record our appreciation for the fair approach.

The appeal fails and is dismissed.

K.K.T. Appeal dismissed.