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RAVI

v.

STATE REP. BY INSPECTOR OF POLICE
(Criminal Appeal No. 22 of 2007)

B

SEPTEMBER 5, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

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Penal Code, 1860: s.302 – Conviction under – Based on evidence of solitary witness – Justification of – Held: Justified since evidence of solitary witness was clear and cogent – Evidence – Solitary witness.

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Criminal trial: Murder – Identification of accused – Plea that identification was not possible as there was not sufficient light at the place of occurrence – Held: Not tenable – Eye-witness categorically stated that there was light in the nearby church and the street lights near Primary School were burning at the time of occurrence and he could see the occurrence in that light – Courts below also referred to the presence of street lights in the rough sketch.

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The Trial Court ordered conviction u/s.302 IPC on the basis of evidence of PW-1, a solitary witness. Before the High Court, appellants re-iterated the stand about the non-sustainability of the evidence of PW-1; and that he was brother of the deceased and therefore was interested and a partisan witness. The High Court did not accept that plea and found the evidence of PW-1 to be clear and cogent and dismissed the appeal.

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In appeal to this Court, appellants contended that conviction should not be based on single witness's evidence and that there was no question of having sufficient light at the place of occurrence at the time of incident and PW-1 could not have identified the accused.

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Dismissing the appeals, the Court

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HELD: 1. So far as the identification aspect is concerned PW-1 has categorically stated that there was light in the nearby church and the street lights near Primary School were burning at the time of occurrence and he could see the occurrence in that light. The trial Court and the High Court referred to the presence of street lights in Ext.P-20, the rough sketch. Therefore the plea of identification being not possible has no substance. Further the accused persons were known to the witness. That is also a relevant factor. [Para 6] [122-A-B]

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2.1. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. [Para 8] [122-D-E]

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2.2. Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon. [Para 8] [122-E-F]

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2.3. Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated. [Paras 8,9] [122-G-H; 123-A]

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Vadivelu Thevar v. The State of Madras (1957) SCR 981; Joseph v. State of Kerala (2003) 1 SCC 465; Yakub Ismailbhai Patel v. State of Gujarat (2004) 12 SCC 229; Bhimapa Chandappa Hosamani and Ors. v. State of Karnataka

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A (2006) 11 SCC 323 and *Kunju Balachandran v. State of Tamil Nadu* (2008) 2 SCC 151 – relied on.

B 3. In the instant case, there was recovery under Section 27 of the Evidence Act, 1872. M.O.8 series, four Vettu Kathis were recovered by the Investigating Officer on the basis of confessional statement of A-1. Looked at from any angle the judgment of the High Court does not suffer from any infirmity to warrant interference. [Paras 13,14] [125-B-C]

C Case Law Reference

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|---|-------------------|-----------|---------|
| | (1957) SCR 981 | relied on | Para 10 |
| | (2003) 1 SCC 465 | relied on | Para 11 |
| | (2004) 12 SCC 229 | relied on | Para 11 |
| D | (2006) 11 SCC 323 | relied on | Para 11 |
| | (2008) 2 SCC 151 | relied on | Para 11 |

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 22 of 2007

E From the Judgment and Order dated 23.12.2005 of the High Court of Judicature at Madras, Bench at Madurai in Criminal Appeal (MD) NO. 430 of 1996

WITH

F Criminal Appeal No. 23 of 2007

B. Raghunath, Vijay Kumar, A. Mariarputham and Aruna Mathur (for Mariarputham, Aruna & Co.) for the Appellant.

G V. Kanakraj, V.G. Pragasam, S.J. Aristotle and Praburamasubramanian for the Respondent.

The Judgment of the Court was delivered by

H **DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the judgment of a Division Bench of the Madras High Court. Two persons have filed the appeal and the appellant

Ravi was A-1 in Criminal Appeal No. 22 of 2007, and Ravi, appellant in Criminal Appeal No. 23 of 2007 was A3. Ten persons had faced trial before the learned Principal Sessions Judge, Kanyakumari. During the pendency of trial one of them i.e. A-10 died and the charge against him had abated. A-5 to A-9 were acquitted by the trial Court and the remaining four were appellants before the High Court. A1 to A4 were convicted for offence punishable under Section 302 of Indian Penal Code, 1860 (in short the 'IPC').

2. Prosecution version in a nutshell are as follows:

There was previous enmity between the elder brother of Albert Walter (hereinafter referred to as the deceased) i.e. Robert Victor Singh (P.W.1) and Al and one Sasi, residing at R.C. Street, Monday market. There was a case that, Al had hacked Sasiat his leg. In the murder case related to one Kumar, deceased Albert Walter was implicated as an accused. On 24.12.1991, when P.W.1 and deceased were going near Neyyoor Hospital, Al to A4 chased the deceased. On 7.1.1992, when P.W.1, deceased and one Ranjith Singh were coming towards the south from Neyyoor Mission Hospital, opposite to the Primary School, at around 7 or 7.15 in the night, Al to A4 armed with choppers in their hands chased deceased who ran from north towards the south. Near the house of one Shahul Hameed, Al to A4 caught hold of deceased. A1 hacked him at his neck, jaw and right cheek. A-2 hacked deceased at his right hand and back. A3 hacked him on his head 3 times with a chopper. A4 hacked him on his abdomen. Consequent to the injuries inflicted by Al to A4, he died at the very place of occurrence. The occurrence was witnessed by P.W.1, Ranjith Guna Singh (PW 2) and Jagdeesh Chandran (PW3) in the light shed by the electric light near the place of occurrence. P.W.1, at around 8.30 in the night, went to the Police Station, Eraniel and lodged a written complaint Ex.P.1 signed by him regarding the occurrence. At the time of occurrence Albert Walter was wearing a shirt M.O.1 and a lungi M.O.2.

A On 7.1.1992, at around 8.30 in the night, when the Sub-Inspector P.W.13 was on duty in charge of the station, as per the complaint Ex.P-1 given by P.W.1, a case was registered in Crime No.10/92 u/s 302 IPC. The First Information Report and the complaint statement were sent to the Court. The copies of
B these were sent to the higher officials. When P.W.17 was in-charge as the Circle Inspector, Eraniel on 7.1.1992, at 2100 hrs., he received the FIR in this case and took up the case for investigation. He visited the place of occurrence at 21.15 hrs and observing it in the presence of the witnesses prepared the
C observation mahazar Ex.P.2. Shelvasdas (P.W.6) was present along with him and attested as a witness to Ex. P.2. P.W.17 prepared the Rough sketch Ex-P.20. He made arrangements for photographing the place of occurrence. He conducted inquest in the presence of the Panchayatdars. The Inquest
D Report prepared by him is Ex.P.21. During the inquest, P.W.17 enquired the witnesses. He entrusted the corpse to Selvamani (P.W.12) Constable with the requisition of conducting post-mortem, Ex.P.14 to the Medical Officer, Colachel. From the place of occurrence, the Inspector P.W.17 seized M.O.3 blood-stained earth, M.O.4 sample earth and prepared the mahazar
E Ex-P.3 in the presence of P.W.6 who attested it as a witness.

As per the requisition of the Police Department, P.W.14 took photographs of the place of occurrence. The photos taken by him are M.O.6 series and their negatives M.O.7 series. As
F per the orders of the Inspector, on 8.1.1992, P.W.12 took the corpse of Albert Walter under his responsibility, then after the inquest was over, he took the corpse to the doctor and entrusted the same for post-mortem examination. After the post-mortem was over, he received the corpse back and handed over the
G same to its relatives.

On 8.1.1992 as per the requisition of the Inspector PW-17 through PW-12, the Doctor (PW-10) conducted the post mortem examination of the corpse at 12 noon. He noticed rigor mortis spread over the corpse and found the following injuries on the
H corpse.

1. An incised injury measuring 10 x 5 x 4 cm on the right cheek extending from the mouth upto the backside of the head. A
 2. An incised injury measuring 4 x 3 x 3 cms noticed on the lower jaw. B
 3. An incised injury measuring 10 x 5 x 5 cm at the lower jaw beneath the first injury. B
 4. An incised injury measuring 10 x 10 x 5 cms on the left side of the neck extending upto the back side of the back. Its edges, muscles, blood-vessels, throat, wind-pipe had all been cut. The neck was found hanging. C
 5. An incised injury on the right ear. The ear was found cut into two. D
 6. An injury measuring 3 x 2 x 1 cm seen on the right side of the back and below the shoulders. The right humerus bone was fractured.
 7. An abrasion measuring 2 x 1 cm on the right shoulder. E
 8. An incised injury measuring 8 x 4 x 2 cm on the right upper arm.
 9. An incised injury measuring 5 x 3 x 2 cm on the pelvic region. F
 11. An incised injury measuring 15 x 3 x 2 cm in the middle part of the head, the bone was cut into two. F
 12. An incised injury measuring 7 x 3 x 2 cm on the right side of the parietal region of the head; the bone was seen cut. G
 13. An incised injury measuring 15 x 5 x 2 cm upto the left cheek of the temporal region and extending on the head. G
- P.W.10 doctor issued the Post-mortem report (Ex.P.15). H

- A The opinion given by the doctor was that the injuries 1 to 13 could be inflicted by choppers; that, injuries 1 to 4 are grievous injuries; that, death would have occurred between 17 hrs to 20 hrs. prior to the post-mortem examination and that, death could have occurred because of the injuries sustained and
- B haemorrhage.

Since it became evident on investigation that offence had been committed u/s 120(B) IPC, he has incorporated section 120(B) IPC in the case and sent the report to the court of the Judicial Magistrate. On 14.1.1992 P.W.17 arrested A1 to A4 below the Villukkuvi over bridge. At that time, he recorded the confessional statement given by A1, in the presence of the witnesses. The admissible portion of the confessional statement is Ex.P-22. On the basis of the confessional statement, A1 took P.W.17 and other witnesses to the southern bund of Pandara tank and from a hole there, took out a sickle and from the tank 3 sickles and presented them. These are Ex. P.8 series. P.W.17 seized them under Ex.P.23 Mahazar in the presence of the witnesses. At the Eraniel Junction, P.W.17 seized the Car No. T. N. 72 - 0156, M.O.9 as identified by A1 in the presence of witnesses under Ex.P. 24 mahazar prepared by him. At Monday market, auto stand, he seized the auto No. T.N.74-4461 (M.O.5) and prepared the mahazar Ex.P.25. At Kanyakumari Taxi Stand, he seized the Car in No. T. N. 69 Z 0255, as pointed out by A1, from one Selvam under Ex.P.26 mahazar. Then, he brought the accused and the material objects to the Police Station and thereafter sent them to judicial custody. On 15.1.1992 at around 6'o clock in morning he arrested the accused A8 and A9 at Eraniel, brought them to the Police Station and then sent them to judicial custody. He showed the sickles seized on 16.1.1992 to the Medical Officer and made enquiries from him. On 17.1.1992 he seized the registers from Hotel Sri Ram on Tuticorin - Ettayapuram road. He sent a requisition to the Judicial Magistrate to record the statements of the witnesses Kaba, Selvam and Ayyappan under Section 164 of the Code of Criminal Procedure, 1973 (in short the 'Code'). He sent a

requisition Ex.P.27 to the Court, to send the case properties for chemical examination. The objects were sent for chemical examination along with the letter of the Judicial Magistrate. The copy of the Judicial Magistrate's letter is Ex. P.28. After the chemical examination, the Chemical Examination Report Ex-P.29 and the Serology Report Ex.P.30 were received.

When P.W.16 was working as Judicial Magistrate, Padmanabhapuram, as per the requisition of the Inspector, he recorded the statements of the witnesses Kaba, Selvam and Ayyappan on 27.1.1992 under Section 164 of Code. Ex.P.17 is the statement of Ayyappan; Ex.P.18, is the statement of Selvam and Ex.P.19 is the statement of Kaba.

Investigation was undertaken and on completion thereof, a charge sheet was filed. Accused persons pleaded innocence and false implication. During trial some of the witnesses resiled from their statements made during investigation. According to the trial Court, the evidence of PW-1 was sufficient to fasten the guilt on the accused. The stand that on the basis of solitary witness's evidence the prosecution version should not be accepted, did not find favour with the trial Court who directed conviction for offence punishable under Section 302 IPC.

3. Before the High Court the stand about the sustainability of the evidence of PW-1 was re-iterated. It was highlighted that he was brother of the deceased and therefore was interested and a partisan witness. The High Court did not accept that plea and found the evidence of PW-1 to be clear and cogent and dismissed the appeal.

4. In support of the appeals, learned counsel for appellants submitted that conviction should not be recorded on the basis of a single witness's evidence. It is pointed out that there was no question of having sufficient light at the place of occurrence at about 7.15 p.m. and PW-1 could not have identified the accused.

5. Learned counsel for the State on the other hand supported the judgments of the trial Court and the High Court.

A 6. So far as the identification aspect is concerned PW-1
has categorically stated that there was light in the nearby church
and the street lights near Primary School were burning at the
time of occurrence and he could see the occurrence in that
B of street lights in Ext.P-20, the rough sketch. Therefore the plea
of identification being not possible has no substance. Further
the accused persons were known to the witness. That is also
a relevant factor.

C 7. The law relating to the approach of the courts when
prosecution version essentially rests on the testimony of a single
witness has been highlighted by this Court in many cases.

D 8. On a consideration of the relevant authorities and the
provisions of the Indian Evidence Act, 1872 (in short the
'Evidence Act') the following propositions may be safely stated
as firmly established:

E (1) As a general rule, a court can and may act on the
testimony of a single witness though uncorroborated.
One credible witness outweighs the testimony of a
number of other witnesses of indifferent character.

F (2) Unless corroboration is insisted upon by statute,
courts should not insist on corroboration except in
cases where the nature of the testimony of the single
witness itself requires as a rule of prudence, that
corroboration should be insisted upon, for example
in the case of a child witness, or of a witness whose
evidence is that of an accomplice or of an analogous
character.

G (3) Whether corroboration of the testimony of a single
witness is or is not necessary, must depend upon
facts and circumstances of each case and no general
rule can be laid down in a matter like this and much
depends upon the judicial discretion of the Judge
before whom the case comes.

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9. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated. A

10. The above position was highlighted in *Vadivelu Thevar v. The State of Madras* (1957 SCR 981). B

11. The position has been re-iterated in large number of cases. Reference may be made to *Joseph v. State of Kerala* (2003 (1) SCC 465), *Yakub Ismailbhai Patel v. State of Gujarat* (2004 (12) SCC 229) , *Bhimapa Chandappa Hosamani and Ors. v. State of Karnataka* (2006 (11) SCC 323) and to *Kunju Balachandran v. State of Tamil Nadu* [2008(2)SCC 151]. C

12. In last named case, it was held as follows:

“As rightly noted by the trial court and the High Court even though PW 1 did not support the prosecution version in toto, yet his evidence lent corroboration to the evidence of PW 2 that the deceased, PW 2 and another had gone to take bath and at that time the accused came there. The evidence of PW 2 has not been shaken although he was cross-examined at length. D

It is necessary to refer to the pivotal argument of the appellant’s learned counsel that PW 2 is the sole eyewitness in the present case and no conviction should be based on the testimony of such an eyewitness who cannot be described as wholly reliable. E

In *Vadivelu Thevar v. The State of Madras* (1957 SCR 981) this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under: (AIR p. 619, paras 11-12) F

A '11. ... Hence, in our opinion, it is a sound and well-
established rule of law that the court is concerned with the
quality and not with the quantity of the evidence necessary
for proving or disproving a fact. Generally speaking, oral
testimony in this context may be classified into three
B categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

C 12. In the first category of proof, the court should have no
difficulty in coming to its conclusion either way — it may convict
or may acquit on the testimony of a single witness, if it is found
to be above reproach or suspicion of interestedness,
D incompetence or subornation. In the second category, the court
equally has no difficulty in coming to its conclusion. It is in the
third category of cases, that the court has to be circumspect
and has to look for corroboration in material particulars by
reliable testimony, direct or circumstantial. There is another
E danger in insisting on plurality of witnesses. Irrespective of the
quality of the oral evidence of a single witness, if courts were
to insist on plurality of witnesses in proof of any fact, they will be
indirectly encouraging subornation of witnesses.'

F Vadivelu Thevar case (*supra*) was referred to with approval
in *Jagdish Prasad v. State of M.P* (AIR 1994 SC 1251). This
Court held that as a general rule the court can and may act on
the testimony of a single witness provided he is wholly reliable.
There is no legal impediment in convicting a person on the sole
testimony of a single witness. That is the logic of Section 134
G of the Indian Evidence Act, 1872 (in short 'the Evidence Act').
But, if there are doubts about the testimony the courts will insist
on corroboration. It is for the court to act upon the testimony of
witnesses. It is not the number, the quantity, but the quality that
is material. The time-honoured principle is that evidence has to
H be weighed and not counted. On this principle stands the edifice

of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.”

A

13. Additionally, in the instant case, the recovery under Section 27 of the Evidence Act, 1872 is there. M.O.8 series, four Vettu Kathis were recovered by the Investigating Officer on the basis of confessional statement of A-1 vide Exh.P4.

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14. Looked at from any angle the judgment of the High Court does not suffer from any infirmity to warrant interference. The appeals are dismissed.

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D.G.

Appeals dismissed.