

A STATE, REPRESENTED BY INSPECTOR OF POLICE,  
TAMILNADU

v.

SAIT & KRISHNAKUMAR  
(Criminal Appeal No. 70 of 2002)

B OCTOBER 1, 2008

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

C *Penal Code, 1860 – s. 302 and s. 392 r/w s. – Conviction*  
– *Acquittal by High Court finding the evidence not cogent and*  
– *credible – Interference with – Held: Not called for since High*  
– *Court had analysed the evidence – Three of the prosecution*  
– *witnesses saw photographs and read name of accused from*  
D *the newspaper prior to test identification parade – Evidence of*  
– *other prosecution witness lacked reliability – Evidence – Test*  
– *Identification Parade.*

**Respondent was tried for offences punishable u/s.**  
E **392 r/w s. 397 IPC. Trial court, relying on the evidence of**  
– **PWs 1 to 3 and 8, convicted and sentenced the respon-**  
– **dent u/s. 302 and u/s. 392 r/w s. 397 IPC. However, High**  
– **Court found the evidence to be not cogent and credible**  
– **and acquitted the respondent. Hence the appeal.**

F **Dismissing the appeal, the Court**

**HELD: The High Court found that that PWs 1 to 3**  
– **had occasion to see the photographs and read the name**  
– **of the accused from the newspaper prior to the test iden-**  
– **tification parade. So far as PW-8 is concerned, the High**  
G **Court found that his evidence was at variance with that**  
– **of PWs 1 and 2 and had also lacked reliability. He claimed**  
– **to be a person who had seen the accused after some time**  
– **of the incident with a blood stained knife. But his con-**  
– **duct was found to be unnatural. If he was the only person**

to have seen the accused from close quarters, it was not explained why he did not say so during investigation. Such a version for the first time in Court has been rightly discarded by the High Court. The view taken by the High Court after analyzing the evidence cannot be said to be a view which is not possible to be taken. Thus, the appeal is not interfered with. [Paras 4, 7 and 8] [122-C; 123-A; 122-D,E; 123-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
No. 70 of 2002

From the final Judgment and Order dated 16.11.2000 of the High Court of Judicature at Madras in Criminal Appeal No. 205 of 1991

S. Thananjayan for the Appellant.

K.V. Viswanathan, B. Ragunath, K.V. Venkataraman and K.V. Vijayakumar for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Heard learned counsel for the parties.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court directing acquittal of the respondent. The Trial Court, i.e. the Court of Sessions, Coimbatore had found the respondent guilty of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC'). It is to be noted that four persons, including the respondent were tried for-2-offences punishable under Section 302 read with Section 34 IPC, Section 392 IPC and Section 392 read with Section 397 IPC. The present respondent, i.e. A-1 was tried for offences punishable under Section 392 read with Section 397 IPC and A-2 to A-4 were tried for offences punishable under Section 392 IPC. The learned Sessions Judge found the respondent guilty of offences punishable under Section 302 as well as for offences punishable under Section 392 read with

A Section 397 IPC and sentenced him to undergo imprisonment for life and seven years rigorous imprisonment for the latter offence. The High Court found the evidence to be not cogent and credible and directed acquittal.

B 3. Prosecution version primarily rested on the evidence of PWs 1 to 3 and PW-8. The trial court placed reliance on the evidence of such witnesses and directed conviction, as recorded above.

C 4. The High Court found that it was an accepted position, as conceded by PWs 1 and 2 that they had seen the photographs and read the names of the accused in the newspaper prior to the test identification parade. On that-3-ground, the High Court disbelieved the evidence of PWs 1 and 2. So far as PW-3 is concerned, the High Court found that his version to have only read the name of the accused in the newspaper and not to have seen the photographs, was not believable. Accordingly, D PWs 1 to 3 were disbelieved. The residual question was the reliability of the evidence tendered by PW-8. Here again, the High Court found that his version lacked credence. He claimed to be a person who had seen the accused after some time of the incident with a blood stained knife. But his conduct was found E to be unnatural. If he was the only person to have seen the accused from close quarters, it was not explained why he did not say so during investigation. Such a version for the first time in Court has been rightly discarded by the High Court. Therefore, F the High Court directed acquittal, as noted above.

F 5. Learned counsel for the appellant-State submitted that even if there was some scope for doubting the evidence of PWs 1 and 2, so far as PW-3 and PW-8 are concerned, a different yardstick had to be applied.

G 6. Learned counsel for the respondent-accused supported the judgment of the High Court.

H 7. We find that so far as PWs 1 to 3 are concerned, the High Court found that they had occasion to see the photographs and read the name of the accused from the newspaper prior to

the test identification parade. So far as PW-8 is concerned, the High Court found that his evidence was at variance with that of PWs 1 and 2 and had also lacked reliability. A

8. The view taken by the High Court after analysing the evidence cannot be said to be a view which is not possible to be taken. B

9. That being so, we are not inclined to interfere in this appeal which is, accordingly, dismissed.

N.J.

Appeal dismissed.