

STATE OF MAHARASHTRA

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v.

DINESH

(Criminal Appeal Nos. 1871-1873 of 2013)

FEBRUARY 07, 2018

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[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code, 1860 – Murder and destruction of evidence – Prosecution alleged that accused no.1 committed murder and accused no.2-respondent destroyed the evidence by cutting the corpse of the deceased into pieces and disposing them – Trial Court convicted accused no.1 u/s. 302 and s. 201 r/w. s.34 and accused no.2-respondent u/s. 201 r/w. s.34 – High Court acquitted both the accused persons – On appeal, held: State failed to furnish correct address of the accused no.1 for effecting service in the criminal appeals – Consequently, criminal appeals against accused no.1 dismissed for non-prosecution – Insofar as accused no.2-respondent is concerned, on perusal of the evidence on the record, out of 23 prosecution witnesses, the evidence of PW-7 was crucial as she was presented as the sole eye-witness who had seen the accused no.2-respondent along with accused no.1, cutting the corpse of the deceased into pieces – When the entire case hinges on the evidence of a sole witness, a paramount duty is cast on the Court to carefully scrutinize such evidence and find out whether such evidence is worth credence or not – According to PW-7, her husband also witnessed the crime, but they could not identify whether the accused were cutting into pieces the body of a dead person or an alive person – Even after watching the brutal crime, neither PW-7 nor her husband had raised hue and cry in the vicinity which was stated to be thickly populated, but they went to sleep peacefully – Unnatural manner in which PW-7 kept quiet for one and half month after witnessing such a brutal crime – Further, husband of PW-7 was neither examined by the police at the time of investigation nor was examined before the Court and no satisfactory explanation for his non-examination was found from the records – Apart from that, neither test identification parade was conducted nor any steps were taken to prove the blood group of the deceased with the blood stains found on the alleged weapon used in the crime – Not safe to convict an

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A *accused solely relying on evidence of PW-7 – Therefore, judgment of the High Court affirmed.*

Dismissing the appeals, the Court

B **HELD: 1.** The appellant-State of Maharashtra has not complied with the directions of Judge-in-Chamber i.e. to furnish the latest and correct address of the unserved common sole respondent-accused No.1 in Criminal Appeal Nos.1872 & 1873 of 2013. Consequently, Criminal Appeal Nos. 1872 and 1873 of 2013 stood dismissed for non prosecution. [Para 5] [519-A-B]

C **2.1** In the remaining case, namely, Criminal Appeal No. 1871 of 2013 against respondent herein i.e. accused No. 2, out of 23 prosecution witnesses, the evidence of PW7 is crucial as she was presented as the sole eye-witness who had seen the accused No. 2 along with accused No. 1, cutting the corpse of the deceased into pieces. Apparently, there was no other witness who had last seen the accused in the company of deceased prior to the place and time of occurrence. When the entire case hinges on the evidence of a sole witness, a paramount duty is cast on the Court to carefully scrutinize such evidence and find out whether such evidence is worth credence or not. [Para 7] [519-C-D]

D **2.2** The evidence of PW7 in the present case needs a careful consideration. Admittedly, PW7 had witnessed the crime being committed by the accused at about 10.30 p.m. in the night and there was no electricity at the alleged scene of offence. According to PW7, her husband also witnessed the crime, but they could not identify whether the accused were cutting into pieces the body of a dead person or an alive person. Even after watching the brutal crime, neither PW7 nor her husband had raised hue and cry in the vicinity which was stated to be thickly populated, but they went to sleep peacefully and thereafter led normal life. There is also no dispute that PW7 did not identify the respondent herein-accused No. 2 and her statement was recorded after a gap of one and half month from the date of incident. [Para 9] [520-B-C]

E **2.3** After considering the evidence of PW7, the circumstances of the entire case and also the evidences of other prosecution witnesses, it is found that husband of P.W.7, who

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was also stated to be an eyewitness to the incident, was neither examined by police at the time of investigation, nor even before the Court and no satisfactory explanation for his non-examination is found on record. Apart from this, even, test identification parade was not conducted and no steps were taken to prove the blood group of the deceased with the blood stains found on the alleged weapon used in the crime. [Para 10] [520-D-E]

2.4 Thus, in the foregoing circumstances, especially taking note of the unnatural manner in which PW7 kept quiet till one and half month after the incident, that too in the midst of thickly populated vicinity, it is not safe to convict an accused solely relying on her evidence. The High Court has rightly classified and considered the evidences of prosecution witnesses and after properly analyzing the facts and circumstances rendered a reasoned judgment, disbelieving the prosecution story. Therefore, the view taken by the High Court affirmed. [Para 11] [520-F-G]

Joseph v. State of Kerala (2003) 1 SCC 465 : [2002] 4 Suppl. SCR 439; *State of Haryana v. Inder Singh* (2002) 9 SCC 537; *Ramnaresh v. State of Chhattisgarh* (2012) 4 SCC 257; [2012] 3 SCR 630; *Seeman @ Veeranam v. State, by Inspector of Police* (2005) 11 SCC 142 – relied on.

Case Law Reference

[2002] 4 Suppl. SCR 439	relied on	Para 8
(2002) 9 SCC 537	relied on	Para 8
[2012] 3 SCR 630	relied on	Para 8
(2005) 11 SCC 142	relied on	Para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1871-1873 of 2013

From the Judgment and Order dated 01.10.2010 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 130 of 2004 with Criminal Appeal No. 343 of 2004 with Criminal Appeal No. 403 of 2004.

Ms. Deepa M. Kulkarni (for Nishant Ramakantrao Katneshwarkar), Adv. for the Appellant.

Subodh K. Pathak, Ms. Pranita Shekhar, Pawan Kumar Sharma, Dharmendra Kumar Sinha, Advs. for the Respondent.

A The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. These appeals by special leave are directed against the judgment and order dated 01.10.2010 passed by the High Court of Judicature at Bombay, Bench at Nagpur, in Criminal Appeal Nos. 130, 343 and 403 of 2004.

B 2. The prosecution has levelled allegations against two accused in these appeals. Accused No. 1—Ajay, was charged with the offence of committing murder of one Rakesh Dattaji Chavan while accused No. 2 (respondent herein) was charged for committing the offences punishable under Section 201 read with Section 34, IPC for allegedly destroying the evidence by cutting the corpse of the deceased Rakesh Dattaji Chavan into pieces and disposing them. The trial Court convicted and sentenced accused No. 2—respondent herein to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default, to further suffer rigorous imprisonment for a period of six months.

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D 3. Having been aggrieved with the conviction and sentence, the respondent filed Criminal Appeal before the High Court which came to be allowed. As a matter of fact, two more criminal appeals were also filed before the High Court, one by the co-accused (accused No. 1) against his conviction and sentence and the other by the State seeking enhancement of sentence against the accused. By the judgment impugned
E herein, the High Court while dismissing the appeal of the State, allowed the appeals filed by the accused and acquitted them of the charges.

4. Dissatisfied with the impugned judgment, three criminal appeals i.e. Criminal Appeal No. 1871 of 2013, against the respondent herein who is accused No. 2, Criminal Appeal No. 1872 of 2013 (against accused
F No.1) and Criminal Appeal No. 1873 of 2013 (against accused No. 1) have been filed before this Court by the State of Maharashtra. In view of failure of the State despite according several opportunities to furnish correct address of accused No. 1 for effecting service in Criminal Appeal Nos. 1872 and 1873 of 2013, the Judge-in-Chamber of this Court finally
G passed an order dated 15th December, 2016 in the following terms:

“Learned counsel for the appellant is granted four weeks’ further time, finally, to furnish the latest and correct address of the unserved common sole respondent in Criminal Appeal Nos. 1872 and 1873 of 2013, failing which, the Criminal Appeal Nos. 1872 and 1873 of 2013 shall stand dismissed without further reference to the Court.”
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5. In spite of the aforesaid order, the appellant—State of Maharashtra has not complied with the directions of Judge-in-Chamber. Consequently, Criminal Appeal Nos. 1872 and 1873 of 2013 stood dismissed for non prosecution. Hence, we are now concerned with Criminal Appeal No. 1871 of 2013 only against respondent herein i.e. accused No. 2.

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6. We have heard learned counsel for the appellant – State as well as learned counsel appearing on behalf of the respondent – accused, and gone through the material on record.

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7. Undoubtedly, out of 23 prosecution witnesses, the evidence of PW7—Pushpabai is crucial in this case as she was presented as the sole eye-witness who had seen the accused No. 2 along with accused No. 1, cutting the corpse of the deceased into pieces. Apparently, there was no other witness who had last seen the accused in the company of deceased prior to the place and time of occurrence. When the entire case hinges on the evidence of a sole witness, a paramount duty is cast on the Court to carefully scrutinize such evidence and find out whether such evidence is worth credence or not. Before assessing the evidence of PW7, we find it appropriate to note some of the views expressed by this Court on this aspect.

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8. In *Joseph v. State of Kerala*, (2003) 1 SCC 465 this Court has observed that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. In *State of Haryana v. Inder Singh*, (2002) 9 SCC 537 this Court has laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. In *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257 this Court, after taking note of the aforementioned two judgments, observed that “the principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eye-witness to the crime. All that is needed is that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime”. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the

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A court to place credence on the statement [*Seeman @ Veeranam vs. State, by Inspector of Police*, (2005) 11 SCC 142].

9. In light of the above, the evidence of PW7—Pushpabai in the present case needs to be considered. Admittedly, PW7 had witnessed the crime being committed by the accused at about 10.30 p.m. in the night and there was no electricity at the alleged scene of offence. According to PW7, her husband also witnessed the crime, but they could not identify whether the accused were cutting into pieces the body of a dead person or an alive person. Even after watching the brutal crime, neither PW7 nor her husband had raised hue and cry in the vicinity which was stated to be thickly populated, but they went to sleep peacefully and thereafter led normal life. There is also no dispute that PW7 did not identify the respondent herein—accused No. 2 and her statement was recorded after a gap of one and half month from the date of incident.

10. After giving our thoughtful consideration to the evidence of PW7, we have also considered the circumstances of the entire case and also the evidences of other prosecution witnesses. We find from the record that husband of P.W.7, who was also stated to be an eyewitness to the incident, was neither examined by police at the time of investigation, nor even before the Court and no satisfactory explanation for his non-examination is found on record. Apart from this, even, test identification parade was not conducted and no steps were taken to prove the blood group of the deceased with the blood stains found on the alleged weapon used in the crime.

11. Thus, in the foregoing circumstances, especially taking note of the unnatural manner in which PW7 kept quiet till one and half month after the incident, that too in the midst of thickly populated vicinity, it is not safe to convict an accused solely relying on her evidence. Thus, we find no firm ground in this appeal or reason to believe the testimony of alleged eyewitness PW7 calling for our interference in the judgment passed by the High Court. In our view, the High Court has rightly classified and considered the evidences of prosecution witnesses and after properly analyzing the facts and circumstances rendered a reasoned judgment, disbelieving the prosecution story. We, therefore, affirm the view taken by the High Court and dismiss the appeal of the State.

12. Pending applications, if any, shall also stand disposed of.