Ramanathan

Vs

The State of Tamil Nadu

Criminal Appeal No. 483 of 1976

(Syed M. Fazal Ali, P. N. Shinghal JJ)

18.04.1978.

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave is directed against the judgment of the Madras High Court dated February 19, 1976, convicting appellant Ramanathan of offences under Section 302 (on two counts), Section 307 and Section 460 of the Indian Penal Code, and Section 27 of the Arms Act. The High Court has confirmed the sentence of imprisonment for life for the offence under Section 307, of rigorous imprisonment for 10 years for the offence under Section 460 and of rigorous imprisonment for 3 years for the offence under Section 27 of the Arms Act.

2. Natarajan (deceased) who was a well-to-do yarn merchant of Nagercoil used to live there in his own house in Kumari Colony. His wife Smt. Nagammal (PW 1) used to live with him in that house. Their second son Varadarajan (deceased) was 21 years old and was studying in fourth year in the Medical College at Palayam Kottai. As September 19, 1974 was Vinayakchaturthi day, he took leave of absence for a day and came to his father's house in Nagercoil on September 18, 1974. On the following day (September 19, 1974) Natarajan returned home from his shop, in his car, at about 9 p.m. His driver parked the car in the compound of his house, locked the gate of the compound wall, delivered its key to Smt. Nagammal and went away. The other servants also went away at about 6 p.m. as usual. Smt. Nagammal locked the outer gate of her house as well as the grill door of the front verandah. Natarajan, his wife Smt. Nagammal and their son Varadarajan took their food at about 10 p.m. Varadarajan went to the office room, which was adjacent to the bedroom of his parents, for study. Smt. Nagammal retired to her bedroom and went to sleep. She woke up and went to the bathroom at about 1.30 a.m. She saw that Varadarajan was sleeping on the cot which was there for the purpose in the office room. One leaf of the door of that room was open at that time. Smt. Nagammal went back to her bedroom and slept there leaving one of the doors of her bedroom open. A zero watt bulb was burning in her bedroom.

3. It is alleged that at about 2.30 a.m. she heard a loud cry from the direction of her son's room and thought that he was shouting in his dreams. But she heard the sound of a shot immediately thereafter. She woke up her husband Natarajan and asked him to go and look in Varadarajan's room. Natarajan opened the door leading to the drawing hall which was adjacent to his bedroom. Smt. Nagammal heard the sound of another gunshot. She went towards the drawing hall and saw appellant Ramanathan standing at a distance of about 1 1/2 feet from the door of the drawing hall and firing his pistol at her husband who was standing near the eastern window of that room. Smt. Nagammal raised an alarm shouting "ayyo". Her husband moved to catch the appellant who went near the western portion of the drawing hall and fired at Smt. Nagammal. The shot grazed her body

just above her stomach. Natarajan caught hold of the hands of the appellant and there was a tussle between them. The appellant shot at Natarajan repeatedly. Natarajan fell down but rose up. He dashed against the wall of the drawing hall. Smt. Nagammal went to his rescue, and the appellant shot at her stomach. She turned to go to the other room to use the telephone but the appellant hit her with the pistol on her head. The appellant then pressed the head of her husband with his pistol and went towards the front verandah. Smt. Nagammal again shouted "ayyo" and ran after him. She put on the verandah lights and the front light of her house and shouted "ayyo" and cried that the thief was running away after shooting. She found that one of the grill doors of the verandah was open at that time. The appellant ran through it, picked up a bag from bear Natarajan's car, scaled over the front compound wall and ran away on the road. Rajagopal (PW 2) who was living in the opposite house heard the reports of the shots and Smt. Nagammal's shouts and came running so quickly that, according to him, he was able to see the appellant when he was getting down from the front verandah of the house and was scaling the compound wall. Smt. Laxmi, who lived near Rajagopal's house, also reached there. They seated Natarajan on a sofa in the drawing hall. Muthu (PW 3) who lived only three houses away and was a relation of Natarajan, also heard the shots and Smt. Nagammal's shout for help and reached there. He immediately brought Dr. Samson (PW 13) at about 3.15 a.m. He examined Varadarajan on his cot in the room and found that he had died. He went to the drawing hall and found Natarajan sitting on a sofa with gunshot injuries on his chest and some injuries on his head. He was however not able to talk and was sitting with a "stunned appearance" and was bleeding. Dr. Samson found that Smt. Nagammal had also received gunshot injuries. As it was a medicolegal case, the matter was referred to the Police and Muthu (PW 3) took Natarajan and Smt. Nagammal in his car to the hospital of Dr. Balasundaram (PW 14). First aid was given to Smt. Nagammal, while Natarajan was taken to the operation room. Inspector Narayana Nair (PW 30) reached there and recorded the statement (Ex. P-1) of Smt. Nagammal at about 4.30 a.m. and registered the case.

4. Smt. Nagammal narrated the incident in her aforesaid statement (Ex. P-1) and specifically stated that the culprit was aged 30 or 35 years, he appeared to be stout, and seemed to have a beard. She categorically recorded that although his name was not known to her, she could identify him "if seen".

5. Dr. Balasundaram (PW 14) X-rayed the injuries of Natarajan and performed an operation. He gave blood transfusion and intravenous fluids, but Natarajan succumbed to his injuries on September 24, 1974. Dr. Balasundaram had examined the injuries of Smt. Nagammal (PW 1) on September 24, 1974. Dr. Balasundaram had examined the injuries of Smt. Nagammal (PW 1) on September 20, 1947 at about 4.30 a.m. and found that two of her injuries had been caused by a bullet, another injury by the grazing of a bullet, and yet another injury by a hit with the butt-head of a revolver. She was taken to the Government Hospital on September 24, 1974, but was brought back to Dr. Balasundaram's nursing home and was discharged on September 25, 1974.

6. Investigation of the case was taken up by Inspector Narayana Nair (PW 30). He found blood-stains at several Places on the cement floor of the front verandah and the rooms of Natarajan's house. He found three spent bullets in the drawing hall and one in the bedroom. He also recovered the lock which was lying near the sofa of the drawing hall as well as a screw-driver. He found some bullet marks also, and prepared the inquest reports. He searched the house of the appellant at Nagercoil on September 20, 1974 at 10 p.m. after sending prior information to the Magistrate, but did not find him there. He sent special search parties to search for him. Deputy Inspector of Police Balasubramaniam (PW 26) searched for the appellant at several places in Madras from September 28, 1974 to October 5, 1974, but did not find him. He traced him to several places in Delhi from

October 7, 1974 to October 19, 1974, but to no avail. He learnt that the appellant was at Madras and left Nagercoil for Madras where he learnt that the appellant was in Hyderabad. He reached Hyderabad on November 11, 1974 and learnt that the appellant was in-patient in Sarojini Eye Hospital, Hyderabad. He went there and arranged for his discharge from that hospital. He was ultimately arrested on November 14, 1974 by Inspector Sadasivan Nair (PW 31). An identification parade was held soon after, on November 16, 1974, by Kanagasabapathy (PW 27), Judicial Magistrate. He was correctly identified by Smt. Nagammal (PW 1), Rajagopal (PW 2), Samraj (PW 9) and Vasantha (PW 10). The Investigating Officer took the help of the ballistics expert also. Ultimately the appellant was charge-sheeted and was tried and convicted as aforesaid.

7. It has been argued by Mr. Anthony, learned Counsel for the appellant, that Smt. Nagammal (PW 1) knew the appellant before the incident as he used to reside in Nagercoil and there were civil and criminal cases between him and her husband. Our attention has particularly been invited to the copy of a notice sent by the appellant to Natarajan on December 24 (26 ?), 1969, in which he (Natarajan) had gone to Trivandrum, that he would come in the night and that he would fix the price and complete the transaction of the property which was the bone of contention between the appellant and the deceased. We find however that when such a suggestion was made to Smt. Nagammal (PW 1), she categorically denied having seen the appellant prior to the date of the incident. She in fact stated that while she had heard his name, she had not met him before the incident. It has been argued, and has not been disputed, that the aforesaid notice was not exhibited or proved during the course of the trial, and does not really from part of the record. The High Court has, all the same, taken the view that even if it were assumed that Smt. Nagammal (PW 1) saw the appellant on one occasion in December 1969, at her house, in the casual manner referred to in the notice, it was quite likely that she did not note his features and may not have remembered them after a lapse of more than four years. Then there is the further fact that the appellant has himself stated that he did not even know that her house was situated in Kumari Colony, Nagercoil. So if that was the position regarding his contact with the house of the husband of Smt. Nagammal, the High Court cannot be blamed for arriving at the conclusion that she did not know the appellant at the time of the incident and had to describe the assailant with reference to his physiognomy.

8. An ancillary argument has been made that as Natarajan (deceased) undoubtedly knew the appellant, the fact that he did not name him to his wife Smt. Nagammal (PW 1), his neighbour Rajagopal (PW 2), his relation Muthuswami (PW 3), Dr. Samson (PW 13) or to Dr. Balasundaram (PW 14) even though he died after four days of the incident, is sufficient to rule out the possibility that it was the appellant who had committed the murders. It has also been argued that if Natarajan could shout "ayyo" at least once as stated by his wife, he could as well shout his name at the time when he saw him for the first time, during the course of the incident. We have gone through the statements of all these witnesses and we find that all of them were questioned in this respect and have given categorical answers. Smt. Nagammal (PW 1) has stated that her husband was not able to talk "on account of the shock". Rajagopal (PW 2) has stated that when he reached the house of the deceased, he found that there was blood on the injuries which had been caused to him by gunshots and "he was stupefied" and "did not talk about anything". When he was cross-examined further, he stated that when he saw Natarajan for the first time "he was in a stupor" and that he did not say anything about the person who had attacked him. As the witness reached the place immediately on hearing the gunshots, so much so that, according to him, he was able to see the appellant when he was getting down from the front verandah of the house and was scaling the compound wall, his statement is important and fully corroborates the statement of Smt. Nagammal (PW 1). Muthuswami (PW 3) also reached the place of occurrence soon after, on hearing the shouts of his aunt Smt. Nagammal (PW 1). He has stated that he asked Natarajan what had happened, but he was

in "a shock" and "never replied". Muthuswami (PW 3) reached the house of Dr. Samson (PW 13) at about 3.15 a.m. and both of them returned to the house of the deceased in about 5 or 7 minutes. Dr. Samson (PW 13) has stated that he found Natarajan (deceased) sitting on a sofa-cum-bed, he had gunshot injuries on his chest and some injuries on his head, and that he was "not able to talk to Me" and was "sitting with a stunned appearance". The witness asked Natarajan what had happened, but he did not reply. Then there is the statement of Dr. Balasundaram (PW 14) who examined all the injuries of Natarajan at about 4.15 a.m. He has categorically stated that Natarajan was not in a position to speak at that time, and that he asked questions to him but "he could not respond". The witness has further stated that Natarajan was unable to speak from the time of his admission in his nursing home, that he was not responding even to painful stimuli even though he could sit, and that the same condition continued till his death. The witness denied the suggestion that Natarajan regained consciousness and was able to talk. He has stated that he was "dazed" and even though there was no serious injury on his head, there may be other reasons for which he was not able to talk even though his centers of speech were not affected. It would thus appear that the High Court has taken all the relevant evidence into consideration in taking the view that Natarajan was not able to name the appellant at the time of the incident, or thereafter.

9. Dr. Natarajan (PW) 15), who was Professor of Forensic Medicine, performed the post-mortem examination on Natarajan's body. He has mentioned the numerous injuries on the dead body. In particular, he has stated that the right lobe of the liver was pale and cirrhotic with laceration in the middle of the right lobe and contusion around. There was another laceration in the right lobe of the river. The fourth rib was found cut and was absent. There was communited fracture of the fifth rib above the middle portion with a number of bits of the bone with cloth of blood. There were fractures of the sixth and eighth ribs also and there was a long contusion. Then there was another equally long contusion on the right parietal pleura along with ribs 1 to 6 in the middle. There was a very long contusion along ribs 1 to 8 on the left side measuring 20 cm. x 6 cm. in the left parietal pleura. The witness has stated the serious condition of the lungs and has stated that Natarajan died of hemorrhagic shock resulting from the injuries sustained by him. The brain surface vessels had congested and the cut sections of the brain disclosed patchial haemorrhages. The injuries which were inflicted on Natarajan were therefore very serious, and we are unable to think that the High Court went wrong in reading the evidence while arriving at its finding that Natarajan was not in a position to name his assailant.

10. It has further been argued in this connection that there was no sufficient light which could enable Smt. Nagammal (PW 1) and Rajagopal (PW 2) to identity the appellant. It is true that there was no light in the drawing hall, or in the office room where Varadarajan was sleeping, or in the front grill verandah from which the appellant is alleged to have broken into the house. Smt. Nagammal (PW 1) and Rajagopal (PW 2) have however stated that two mercury street lights, each having two tubes, were burning in front of the verandah, and it is not disputed that the distance between them and the verandah was not more than 29 feet. Rajarathinam (PW 8) has stated that he had put on the street light switch on the preceding evening at 6.30 p.m. and that all the three street lights on Kumari Colony Road were burning. Moreover, Smt. Nagammal (PW 1) has stated that the street light was flowing through the half open front door of the drawing hall and that a white zero watt bulb was burning in her bedroom. She has also stated that there was a ventilator just above the window of the drawing hall through which the light was coming. As has been stated, the verandah had a grill, and even if Mr. Anthony's argument is accepted that the shutters of the window of the drawing hall had been closed and the street light did not pass through them, the High Court cannot be blamed for holding that there was sufficient light to enable Smt. Nagammal to see and notice the features of the appellant.

11. An effort was made to argue that as Smt. Nagammal did not mention in her statement Ex. P-1 that her assailant was wearing a turban, the description was quite insufficient and should have been rejected. We have examined Smt. Nagammal's statement in Ex P-1. She has stated that the assailant was about 30 or 35 years old, he appeared to be stout (hefty ?) and seemed to have a beard. The High Court has taken the view that the description was satisfactory, and we see no justification why it should be rejected merely because Smt. Nagammal did not state, at that her assailant was wearing a turban. Her explanation that she could not make a mention of the turban in Ex. P-1 because of "anguish" cannot be said to be unsatisfactory. Then there is the further fact that a mention had been made of the turban even at the time of the inquest report which was drawn up the same day. It would thus appear that when the other description in Ex. P-1 was quite satisfactory, it could not have been rejected merely because Smt. Nagammal did not state that the assailant was wearing a turban.

12. The prosecution has examined Smt. Nagammal (PW 1) and Rajagopal (PW 2) as the main witnesses against the appellant. We have made a mention of the description of the assailant given by Smt. Nagammal in her report Ex. P-1 and its reiteration in her statement in the trial Court with the further statement that the assailant was wearing a turban at the time of the incident. In both the statements she claimed that she would be able to identify him on seeing him. As has been stated, there is no reason to disbelieve her statement that she had not seen him on any earlier occasion. The incident involved two murders, and the firing of at lest eight shots including the two which hit Smt. Nagammal from close proximity. All that must have given sufficient opportunity to Smt. Nagammal to notice the features of her assailant who was out to destroy her family. There was sufficient light to enable her to do so and it therefore remained for the Investigating Officer to arrange for a test identification parade. We shall deal with that aspect of the evidence in a while.

13. Rajagopal (PW 2) was the Vice-Chairman of the Nagercoil Municipality and was living just across the road, at a distance of not more than 40 feet from the house of the deceased. He has stated that he immediately got up on hearing the two gun shots and put on the light of his house. He went and saw both in front and backward but could not see anything at his hour. He again went to bed. Two minutes later he heard 4 or 5 shots from Natarajan's house. He immediately put on the light of the drawing hall of his house and came to his front verandah. He heard Smt. Nagammal (PW 1) raising an alarm, and saw the appellant getting down from the front verandah of her house, going north, towards her car-shed and then scaling the front compound wall of her house and jumping and running away towards the north of the main road. The witness did not know the appellant earlier, but he saw that he was having a beard and had tied a circular turban. He clearly stated that he could see him because of the tube lights which were burning at that time and the light in front of Natarajan's verandah. The Investigating Officer therefore wanted to test his capacity for identification also, as soon as the culprit was arrested.

14. It will be recalled that the appellant could be arrested only on November 14, 1974, and it is not disputed that a test identification parade was held soon after on November 16, 1974. It cannot therefore be said that there was any delay in holding the parade. The parade was held by Kanagasabapathy (PW 27), who was a Judicial Magistrate at Nagercoil. He has stated that he selected eleven under-trial prisoners from the sub-jail for the test identification parade who were almost of the same size and complexion as the appellant, and that as the appellant was having a slight beard, three of the selected under-trial prisoners were persons having slight beards "just like the accused". It appears from the memorandum of the identification parade that the persons who are mixed with the appellant were persons of the same status (or position in life). The appellant was allowed to change his place (or number) on each occasion when a witness was called to identify

him. The Magistrate has given all the details of the identification parade and has stated that the appellant was correctly identified by Smt. Nagammal and Rajagopal, as well as by the two other witnesses. No effective argument has been believed by the trial Court and the High Court in these circumstances.

15. An attempt was made to argue that the witnesses were able to identify the appellant because his photograph had appeared in a local newspaper on November 16, 1974. Smt. Nagammal (PW 1) has however stated that she was not in the habit of reading a newspaper and did not even know about the publication of any such issue. Rajagopal (PW 2) was also cross-examined in this respect and he has also stated that he had not noticed any such publication. It cannot therefore be said that the parade was a farce or was a got-up affair.

16. It has however been argued further that as only the appellant was wearing a white dhoti and a white shirt, the test identification parade was of on consequence and the High Court erred in taking a contrary view. It may be pointed out that when such a suggestion was made to the Magistrate who held the test identification parade, he denied it, and it cannot be said that there was any such infirmity in the parade. There is also satisfactory evidence to prove that the appellant was not wearing spectacles as his pair was given to another prisoner before the witnesses were called in for his identification.

17. Mr. Anthony has however argued that as the prosecution has not led any evidence to prove that the appellant was kept 'ba Parda', the test identification parade was of no consequence because of that fatal infirmity. Learned Counsel has tried to find support for his argument from a decision of the Rajasthan High Court in Dhokal Singh v. The State (ILR (1953) 3 Raj 752) where it was held that it was the duty of the police not only to warn the accused at the time of his arrest to keep his head hidden as be was to be put up for identification but to keep him ba parda and to make proper entries in the police record to that effect. It was also held in that case that the evidence of the police constable or the other police officers should be produced to prove that the accused had been kept ba parda. It appears, however, that the learned Counsel was not aware of a later decision of a Full Bench of the Rajasthan High Court in State of Rajasthan v. Ranjita Ladhuram (AIR 1962 Raj 78) in which Dhokal Singh's case was referred for the purpose of laying down the correct law on the following matter :

> (1) Whether it is necessary that entries should be made in the various police records of the precautions that were to be taken for keeping the accused person ba parda while under police custody.
>
> (2) Whether it should be specified in the warrant of commitment of the accused, when he is sent to the judicial custody that he is to be kept ba parda till the identification parade takes place, and what precautions should the jail authorities take for keeping the accused ba parda.
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> (3) Whether necessarily entries should be made in the jail record for keeping the accused ba parda while he is in the judicial lock-up.

The Full Bench examined the matter and held that the propositions laid down in Dhokal Singh's case could not be regarded as a rule of law and had been far too broadly laid down to merit acceptance even as practical propositions and could only lead to the accentuation of the difficulties of honest investigating officers and truthful witnesses. The Full Bench answered the questions as follows :

(1) It is not necessary that entry should be made in the various police records of the precautions that were taken for keeping the accused persons ba parda while under police custody.

(2) It is also not necessary to specify in the warrant of commitment of the accused when he is sent to judicial custody that he is to be kept ba parda till the identification parade takes place, nor it is necessary to specify the precautions that the jail authorities are to take for keeping the accused ba parda.

(3) It is also not necessary that entries should be made in the jail records for keeping the accused ba parda while he is in the judicial lock-up.

The appellant cannot therefore derive any benefit from the decision in Dhokal Singh's case which has been adequately re-examined in Ranjita's case.

18. Identification parades have been in common use for a very long time, for the object of placing a suspect in a line-up with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more necessary where the name of the offender is not mentioned by those who claim to be eyewitnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details and would be able to identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the selfsame witnesses during the course of the trial. The line-up of the suspect in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual practice.

19. In the present case where there was satisfactory evidence to prove that at least two of the witnesses emphatically claimed from the very beginning of the incident that they had noticed the culprit and had claimed that they could identify him, the holding of a test identification parade was absolutely necessary. The fact that such a parade was held within two days of the arrest of the appellant, and was held by a Judicial Magistrate with all the necessary precautions and arrangements, leaves no able importance. The appellant knew about that evidence from the date the parade was held, and if he wanted to demolish it, it was for him to do so by effective cross-examination of the witnesses and or by examining his own witnesses in rebuttal. As the appellant has not succeeded in doing so, it is futile to contend that we should reject this important piece of evidence merely because the prosecution did not lead evidence of the nature referred to in Dhokal Singh's case. The trial Court and the High Court have placed reliance on the statements of Smt. Nagammal and Rajagopal and have found that the identification parade was held "properly and fairly". No satisfactory argument has been advanced why we should interfere with that finding.

20. It has next been argued that although the evidence of the prosecution showed that eight shots were fired at the time of the incident, the High Court erred in accepting the opinion of Ramiah (PW 23), who was the Firearms Expert of the Tamilnadu Forensic Science and Chemical Laboratory, Madras, that all of them were fired from one and the same firearm. It has been urged that as no "empties" were found at the place of the incident, the eight shots could not have been fired from a

pistol and the expert's opinion that they could have been fired from a revolver should not have been accepted as, even according to him, such revolvers with eight chambers were rare. It has also been argued that the evidence of the expert could not have been accepted because he did not take photographs for the purpose of comparing the land and groove markings on the bullets and contented himself by their comparison under a "comparison microscope".

21. We do not think there is any real basis for this argument. Even if it were assumed for the ask of argument that the crime revolver had only six chambers and an eight-chamber revolver was not available for the commission of the murders, there was nothing to prevent the appellant from reloading the revolver after firing the first two shots on hearing which Smt. Nagammal (PW 1) came from the threshold of her bedroom to the drawing hall. Ramiah (PW 23) has stated that if the person using the revolver had been an expert, he would have required about a minute to reload it. The prosecution has led satisfactory evidence to prove that the appellant was an expert who had taken regular training in the use of firearms and has passed it with credit. If it would take a minute for an expert to reload all the six chambers, it would have taken less than that time in replacing the two cartridges which were used in the first two shots. As it is, the evidence on the record does not exclude the possibility of such a reloading, and when an assassin who has received training in the use of firearm trespasses at night into the house of his enemies with the intention of murdering them, it would be quite natural for him to replace the discharged cartridges. Much would not therefore turn on the question whether the appellant used a six or an eight-chamber revolver in the commission of the crime.

22. In support of his argument regarding examination under the comparison microscope without the aid of photographs, Mr. Anthony has placed reliance on The State of Gujarat v. Adam Fateh Mohmed Umatiya ((1971) 3 SCC 208 : 1971 SCC (Cri) 381). In that case the expert did not take photographs of the misfired cartridges, and admitted that the photographs were necessary for comparison. In that context this Court made a reference to Burrad's The Identification of Firearms and Forensic Ballistics (Third Edition, 1956, p. 173), where it has been stated that any evidence of identification which is unsupported by photographs cannot be regarded as being anything more than an expression of opinion, and held that it did not establish that the test cartridges and the empty cartridges were fired from the same weapon or that the misfired cartridge was fired from the same weapon. That was therefore a different case which was decided on its own facts. It also appears that there was no evidence in that case to show that the comparison had been made with the help of a comparison microscope. The evidence of the expert therefore suffered from an inherent infirmity and was not satisfactory.

23. Counsel for the appellant however tried to refer to some observations from Hatcher's Firearms Investigation, Identification and Evidence for the purpose of showing the importance of photography and the use of enlarged photographs in such cases. Hatcher has devoted a whole chapter to photography in investigation of firearms crime and while discussing the history of firearms identification he has pointed out the reasons why considerable importance was given to such photographs for the visual satisfaction of the Judge and the jury. But while referring to the importance of photographs taken directly through the comparison microscope, he has devoted a paragraph to the decline in the use of micro-comparison photographs and has gone on to state as follows :

> There are also photographic reasons for the almost entire abandonment of this method of presentation. Unfortunately, the lenses of a camera do not adjust in the way that the human eye adjusts. The depth of field is extremely limited. Unlike the

> human eye, a photographic film has far less tolerance to variations in lighting. Photographs are almost always unsatisfactory to the expert who has made a positive comparison through the microscope. You photographs only what you can see at one single time. The camera cannot move along the surface of bullets to pick up identity after identity.

24. The position has been stated as follows in Section 178 (page 260) of Ehrlich and Jones' Photographic Evidence, 1967 edition :

> Usually more can be seen through a microscope than can be photographed through it. There are several reasons for this superiority of visual perception. In the first place, the eye looking through a microscope can scan the filed and change focus at different points of the filed. In addition, the eye can see any movement present, and, with the aid of mental "filling in", is able to perceive form and detail that may not be recorded photographically. Moreover, the lens system of the microscope produces a curved field; this works out nicely for the eye since the retina is curved, but does not work so well photographically since the film plane is flat. Due to this latter defect, not all of the field will be photographed to the same degree of sharp focus, and some distortion may be produced in the photograph.

25. It cannot therefore be doubted that a comparison microscope is the most important and most widely used scientific instrument in comparing the crime cartridge with the test cartridge. Such microscopes are of various types but they have been described as follows in Volume 1 of Mathew's Firearms Identification at page 38 :

> A comparison microscope consists essentially of two compound microscopes, having identical optical systems, so that they give the same magnification, connected by an optical "bridge" containing a combination of prisms such that by viewing two separate objects (one under each microscope) through a single eye-piece the two objects may be compared by bringing the images of parts of each into juxtaposition.

It has further been stated that when the desired condition is attained for purposes of comparison, the bullets are said to be "matched", and correct opinion can be given thereon.

26. It is true that there has been considerable difference of opinion amongst investigators regarding the use of photographs in a court for the purpose of illustrating the matching of the markings, and while it may be that microscopic photographs, when taken with due care and in the best of conditions, may enable the evidence to be placed on the record in a visible form, it cannot be denied that a court would be justified in rejecting the opinion of an expert who has examined the markings under the comparison microscope simply for the reason that he has not though it necessary to take the photographs. It is therefore not possible for us to reject the evidence of Ramiah (PW 23) who has categorically stated that he has compared the land and groove markings on the bullets under a comparison microscope, simply because he did not think it necessary to take the photographs.

27. It has next been argued by Mr. Anthony that the appellant could not possibly have committed the murders as he had written a letter to the Magistrate informing him that he was involved in two motor-cycle accidents in 1948 and 1963, three car accidents in 1966, 1970 and 1974, and had been injured in 1969 when a constable stamped on his leg, and had lost his vision in the accident etc. Reference in this connection has also been made to the statement of the Investigating Officer

showing that the accused was brought to the Court of Session by supporting him with an arm, and to the fact that he was found by the police in the Sarojini Eye Hospital after the present incident. We find that a similar argument was urged for the consideration of the trial Court as well as the High Court, but it was rejected for satisfactory reasons, Sreenivasan (PW 16) who was the Inspector anchorage of the Civilian Rifle Training Centre, at Nagercoil, has stated that the appellant was one of the members of the Center who received training under him from January 2, 1972 to March 12, 1972, and passed the test having secured a high percentage of marks. The witness has stated that the appellant was in a fit state of health, that his vision was all right, and that he could shoot the rifle by triggering it only with his left hand. He has further stated that the appellant used to take aim with his left eye and press the trigger with his left forefinger and that a person who knows how to fire a rifle can also fire a revolver. There is therefore no occasion for us to re-examine the finding of the two Courts regarding the ability of the appellant to commit the crimes.

28. An attempt has also been made to argue that there was no justification for the High Court to take into consideration the evidence regarding the movement of the appellant after the occurrence and that he did not in fact abscond and his statement that he had gone to Madras to set off Subramania Thevar's son on September 20, 1974, as he was leaving for America, should have been accepted. This argument is also of no consequence in view of the detailed statement of Deputy Inspector Balasubramaniam (PW 26) who was placed on special duty in the months of September, October and November, 1974, to trace out the appellant. The prosecution has examined some other witnesses also regarding the movements of the appellant, but even the statement of Balasubramaniam (PW 26) is sufficient to justify the High Court's view in the matter.

29. The prosecution has led evidence to prove the motive for the crime, and it has been argued that the High Court erred in taking the view that the dispute in regard to the resale of the coconut tope was a "burning issue" between the appellant and the deceased at the time of the incident. Even if the other evidence on the record is left out of consideration, there can be no doubt that the deceased had purchased the coconut tope from the appellant's brother and the appellant was not only challenging his possession but was pressing him for a resale. The evidence relating to the civil and criminal cases between the parties justifies the conclusion arrived at by the High Court which, we have no doubt, is essentially correct.

30. It has lastly been argued that although a number of fingerprints were obtained by the Investigating Officer and others, the High Court did not take into consideration the fact that those prints did not compare with the finger-prints of the appellant. It has been pointed out that the High Court erred in thinking that the fingerprints of Varadarajan were not obtained by the police even though the inquest report showed that the prints had been taken. It is true that the evidence on the record goes to show that a number of fingerprints were obtained during the course of the investigation, and it may well be that the identity of the appellant could not be established on that basis, but that could not be said to be enough to justify his acquittal when there was overwhelming evidence against him to establish his guilt.

31. It would thus appear that the learned Counsel for the appellant has not been able to advance any such argument as would justify this Court's interference with the concurrent findings of the trial Court and the High Court against the appellant. The appeal fails and is dismissed.

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