

Vahula Bhushan alias Vahuna Krishnan

Vs

State of Tamil Nadu

Criminal Appeal No. 821 of 1981

(B. C. Ray, N. D. Ojha JJ)

31.10.1988

JUDGMENT

RAY, J. –

1. This appeal by special leave is directed against the judgment and order dated February 19, 1981 passed in Criminal Appeal No. 105 of 1980 by the High Court of Judicature at Madras confirming the conviction and sentence passed against the appellant by the Sessions Judge, West Thanjavur Division convicting the accused under Section 302 Indian Penal Code and sentencing him to undergo imprisonment for life. The prosecution case is that PW 1, Nagarajan who is a coolie by profession came to the house of Srinivasa Naidu who is living in Nandavanam belonging to Uppiliappankoil at about 5 a. m. on September 20, 1978 to do work in the garden as he was asked by Srinivasa Naidu on the previous day i. e. September 19, 1978 to meet him for doing work in the garden. At that time Srinivasa Naidu was not in the house and so he met the wife of Srinivasa Naidu and enquired of her as to what work he had to attend. At the that time he heard a noise emanating from the eastern direction about 200 feet away. PW 1 then went towards that part of the garden and found that accused A-1, Kannan with MO 1 stick and A-2, Vahula Bhushan alias Vahuna Krishnan with MO 2 stick had been beating the deceased Chinnaiyan. There was a gunny bad, MO 5 with dhusked coconuts therein at that place. On seeing PW 1 the accused A-1 and A-2 stopped beating and dropped the sticks MO 1 and 2 on ground. Thereafter, A-1 took the crowbar, MO 3 which was imbedded in the earth in his right hand. The accused came in front of the house of Srinivasa Naidu where a bullock cart was standing. They then tied Chinnaiyan with a rope, MO 4 on the wheel of the said cart. At the intervention of Srinivasa Naidu the accused, A-1 untied the rope. Thereafter, Srinivasa Naidu went inside the house. The deceased, Chinnaiyan entreated that he would never commit any theft and asked for giving him the crowbar, MO 3. The accused A-2 then said that he would commit theft of coconuts by using the crowbar and assaulted Chinnaiyan on the right arm above the elbow and also on the right side of the forehead causing stabbing injuries. Blood gushed out of these injuries and the deceased immediately fell down there. On his making signs for water, Srinivasa Naidu brought coffee in a tumbler and PW 3 and one Raman poured coffee in his mouth. The deceased after drinking a mouthful of coffee leaned his head and he expired immediately.

2. The accused A-1 and A-2 were placed on trial. Accused A-1, Kannan was charged with an offence under Section 302 read with Section 34 IPC and under Section 323 IPC and accused A-2 was charged with the offence under Section 302 IPC. PW 7, Dr. Jeena Ismath, Women Assistant Surgeon who did the post-mortem examination on the dead body of the deceased Chinnaiyan found the following injuries on the dead body :

- (1) A stab wound 1/2" x 1/4" in size on the right side of forehead 2" below the hair line.
- (2) An abrasion 2" x 1" on left side of the face over maxilla.
- (3) A stab wound on posterior medial aspect of right upper arm above the right elbow - size 1" x 1/20" x 1/4" depth.
- (4) Haematoma on the right knee on the anterior aspect 3" above and 1" below the knee joint.
- (5) Both testes swollen.
- (6) Abrasion 1" x 1/4" size in the right side of hip over greater tubercle.
- (7) Rope markings were found on the back and on both upper arms.

There was discharge of blood from the right ear. Scrotum was enlarged. On opening only, colourless liquid came out and no blood was found in it.

3. On internal examination, PW 7 found heart and blood vessels empty. Intestines distended with gas and faeces. PW 7 found a fracture of 1/2 in size on the right frontal bone. There was extravasation of blood and brain matter was found external to the brain covering dura mater. Sinus was empty. PW 7 was of the opinion that the deceased would have died of shock and haemorrhage caused by head injury i. e. injury 1. External injury 1 with its corresponding internal injury is sufficient to cause death. Injury 3 was also sufficient to cause death due to extensive bleeding contributing to the death of the deceased. Injuries 1 and 3 according to PW 7 could have been caused by a weapon like MO 3. PW 7 has further opined that the injuries 2, 4 and 6 could have been caused by beating with sticks like MOs 1 and 2 and injury 7 could have been caused by the tying of the deceased with MO 4. Injury 5, as per the opinion of the doctor PW 7 is not actually an injury and it could have been due to the deceased having hydrocele. PW7 has further opined that all the injuries were ante-mortem.

4. PW 1 is the only eye-witness to the incident. The trial court on weighing the evidence of PW 1 as well as the evidence of the doctor PW 7 held that the charge under Section 302 IPC has been proved against the accused A-2. Accused A-2 was, therefore, convicted under Section 302 IPC for committing the crime of murder of deceased, Chinnaiyan by stabbing him with the crowbar and sentenced him to undergo imprisonment for life. The trial court further held that so far as the charge under Section 302 read with Section 34 IPC and under Section 323 IPC against the accused A-1, it was not proved beyond reasonable doubt and so the accused A-1 was acquitted of all the charges.

5. Accused A-2 filed an appeal being Criminal Appeal No. 105 of 1980 in the High Court of Madras against the judgment of the trial court. The appeal was dismissed and the conviction and sentence awarded by the trial court were upheld.

6. The High Court held that PW 1 deposed in a cogent and reasonable manner regarding the occurrence in this case and his evidence was trustworthy. It was further held that the evidence of PW 1 on the whole is natural and acceptable. The evidence PW 1 is corroborated by the medical evidence adduced through PW 7. The High Court further held that :

Although it is not the principle of law that a conviction cannot be sustained on the testimony of a single witness, yet it is a well known principle of criminal jurisprudence that before convicting a person on the sole testimony of a witness, the court must have implicit faith and reliance on his testimony. Only if the said sole witness is found to be interested, hostile to the accused, unreliable, not firm and discrepant, the benefit of doubt should be given to the accused. In the instant case, when we apply the above test, we find that the evidence unfurled through PW 1 is convincing, trustworthy and is amply corroborated by the medical evidence in this case as discussed above. In this view, we have no hesitation to hold that the sole witness PW 1 who had seen the occurrence in this case has satisfactorily withstood the strenuous cross-examination that had been done on behalf of accused-appellant 2 herein and nothing material has been elicited in his cross-examination so as to discredit his evidence. We have no hesitation to hold that the prosecution has established that it was A-2 the appellant herein, who had caused the fatal injuries on the deceased with MO 3. In the instant case, the offence under Section 302, Indian Penal Code has been proved to the hilt by the prosecution against A-2, the appellant herein.

7. The instant appeal on special leave has been filed against this judgment and order. It has been urged on behalf of the appellant that the courts below should not have convicted the accused on the sole testimony of PW 1 as the same was not corroborated by the evidence of any other witness. This contention is unsustainable inasmuch as there is no rule of law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if believed. The testimony of a single witness if it is straight-forward, cogent and if believed is sufficient to prove the prosecution case, the conviction can be made on the testimony of such a single witness.

8. In the case of Vadivelu Thevar v. State of Madras the appellant was convicted on a charge of murder on the sole testimony of a witness. The question arose whether such a conviction can be sustained or not. It was held that there was no statutory requirement that a conviction cannot be made on the testimony of single witness unless it is corroborated. The court can accept the evidence of a single witness through uncorroborated and convict an accused except in cases where the nature of the testimony of the single witness itself required, as a matter of prudence, that corroboration should be insisted upon, as in the case of a chile witness, an accomplice or any others of an analogous character.

9. In the instant case, the High Court has appraised the evidence of PW 1 and accepted the same as it was cogent and trustworthy considering the facts and circumstances of the case. Furthermore, the evidence of PW 1 was corroborated by the medical evidence. In such circumstances, in our considered opinion this contention is devoid of any merit. The second contention is that MO 3, crowbar was found imbedded in the earth at the place where the deceased was first beaten by accused A-1 and A-2 with sticks MO 1 and MO 2. At the time when the crowbar was seized and taken possession of by the police it was found embedded in the earth in the same place. It was, therefore, submitted that the use of the crowbar by the accused A-2 in causing stab injuries on the person of the deceased is not possible. This submission was also made before the High Court and the High Court rightly repelled the submission by holding that in Ex. P. 1 it had been mentioned that MO 3 contained blood-stains. PW 1 has clearly stated in his evidence that it is accused A-2 who caused the stab injuries with the crowbar MO 3 on the person of the deceased, Chinnaiyan which resulted in his death on the spot. Furthermore, it is also evident from the evidence of PW 1 that accused A-2 while proceeding towards the house of Srinivasa Naidu took out the crowbar MO 3 in

his right hand. There is, therefore, no iota of doubt that MO 3 i. e. crowbar was in the hands of accused A-2 and he assaulted the deceased with the said weapon. This submission, therefore is not at all tenable.

10. No other submissions have been made on behalf of the appellant before us. On a consideration of the facts and circumstances of the case, the findings arrived at by the High Court are unexceptionable. The appeal is, therefore, dismissed and the conviction and sentence awarded by the High Court are upheld.

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