

SUPREME COURT OF INDIA

Jayaseelan

Vs.

State of Tamil Nadu

Crl.A.No.456 of 2002

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

11.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court allowing the appeal filed by the State. Challenge in the appeal was to the correctness of the judgment of learned Sessions Judge, Madurai directing acquittal of the present appellant. He was charged for commission of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC'). In fact two persons were tried in the said Sessions Case. Present appellant is the son of A2. By the trial court's judgment, A2 was also acquitted. Though State had questioned the acquittal of both the accused persons, leave was granted by the High Court only in respect of the present appellant i.e. A1.

2. Background facts in a nutshell are as follows:

“PW.1 is residing at Paloothu. The deceased Murugan (hereinafter referred to as the `deceased') is his sister's son. PW2 is the younger brother of the deceased. The deceased was also residing in the same place. PW1 knows the accused. A1 is the son of A2 and they are also residents of the same place. The occurrence had taken place on 15.1.1990 around 5.00 p.m. It was a festival day (the day following the festival of Pongal, which falls on 14.1.1990). On that day, PW 1 went towards the house of one Chellappa Thevar and he was standing there for some time. The house of Chellappa Thevar is in the middle street of the said village. The deceased was coming from north to south in that road bringing two bulls. As already stated, on the day in question, the festival related to washing the bulls; decorating them; painting the horns and then after garlanding the same, they would be taken around the town in a joyous manner. A2 was coming behind the deceased with a stick in his hand. He was just swinging the stick around his body. A1 was proceeding from south to north in the same road and he was armed with a knife. With that knife, he stabbed on the left side of the chest of the deceased and ran towards south. The victim tumbled on his feet in the street. On seeing this, P.Ws.1 and 2 ran towards him and gave their hand of

support. One other person by name Chinnasamy also witnessed the occurrence and he gave a hot chase to A1. The injured, who by then had lost his consciousness, was put on a cart and taken to the private hospital of one Anbalagan by PWs. 1 and 2. But the Doctor was not available there and Murugan breathed his last outside the hospital itself while he was in the cart. Immediately, PWs. 1 and 2 reached the police station, taking the dead body in that cart. PW.6 was the Sub Inspector of Police in the Police Station during the relevant time, before whom, PW 1 gave the complaint. Ex.P1 is that complaint attested by PW.2 and one Chinnasamy, who accompanied them. There was an earlier incident regarding the construction of a house between A2 and the father of the deceased. During the occurrence in the present case, the shirt and dhoti of PW.1 became blood stained and the shirt of PW2 also became blood stained. The personal wearing apparels of PWs. 1 and 2 were produced at the police station. MOs.1 and 2 are the shirt and dhoti of PW1 and after getting change dress from his house, he surrounded them at the police station. M03 is the weapon of offence in the hands of A1, which he used in inflicting the fatal injury on the deceased. He was examined during inquest by the investigating Officer. P.W.2 had also given evidence in total corroboration to the oral evidence of PW1 on all material aspects as referred to above. He stated that, MOs.4 and 5 are his shirt and lungi, which he handed over at the Police Station, after getting change dress from his house. He was examined during inquest. PW.3 witnessed the preparation of Ex.P.2/ observation mahazar as well as the recovery of MOs. under Ex at 7.30 a.m on 16.1.1990.

The medical officer was of the opinion that the deceased appeared to have died on account of the stab wound over the vital organ, namely heart. The trial court did not accept the prosecution version and directed acquittal primarily on the following grounds:

- (1) There is an inordinate delay in lodging the complaint with the police:
- (2) There are materials to show that the complaint was prepared after deliberations and discussions;
- (3) There is delay in sending the material records to the court;
- (4) A1 had an injury and that had not been explained by the prosecution, which affects their case in toto.

The said acquittal was primarily on the ground that there was delay in lodging the FIR, and that the injury on the accused was not explained. The High Court found that in view of the evidence of PWs 1 & 2 the trial court was not justified in directing acquittal. It was noted that the occurrence had taken place around 5 PM and immediate concern was to render medical assistance. The complaint was lodged around 7.30 PM. Further injuries on A1 were of superficial nature and therefore, the trial court was not justified in directing acquittal. It was further noted that if there was

any delay in the investigation that was not sufficient to discard credible oral evidence of PWs. 1 & 2.

Accordingly, the acquittal was set aside and the life sentence was imposed after recording that the accused was guilty of offence punishable under Section 302 IPC.”

3. Learned counsel for the appellant submitted that there was unexplained delay in lodging the FIR. The injuries on the appellant were not explained and in view of the fact that the co-accused A2 was acquitted on the same set of evidence, the High Court ought not to have allowed the appeal. The evidence of the eye witnesses cannot be said to be totally without possibility of false implication.

4. As noted above, there was no delay in lodging the FIR as has been rightly noted by the High Court in view of the factual scenario highlighted. Additionally, the injuries on the accused were of very minor nature and superficial.

5. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See *Nisar Alli v. The State of Uttar Pradesh*¹). In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See *Gurucharan Singh and Anr. v. State of Punjab*²). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab s/o Beli*

*Nayata and Anr. v. The State of Madhya Pradesh*³ and *Ugar Ahir and Ors. v. The State of Bihar*⁴). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of Madhya Pradesh*⁵ and *Balaka Singh and Ors. v. The State of Punjab*⁶. As observed by this Court in *State of Rajasthan v. Smt Kalki and Anr.*⁷, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in *Krishna Mochi and Ors. v. State of Bihar etc*⁸. and in *Sucha Singh v. State of Punjab*⁹. It was further illuminated in the *Zahira H. Sheikh v. State of Gujarat*¹⁰, *Ram Udgar Singh v. State of Bihar*¹¹, *Gorle S. Naidu v. State of Andhra Pradesh*¹², *Gubbala Venugopalswamy v. State of Andhra Pradesh*¹³ and in *Syed Ibrahim v. State of A.P.*¹⁴.

6. Above being the position, the absolutely confusing judgment of the trial court has been rightly interfered with by the High Court. We found no substance in this appeal, which is accordingly dismissed.

¹AIR 1957 SC 366 ²AIR 1956 SC 460 ³1972 (3) SCC 751 ⁴AIR 1965 SC 277
⁵AIR 1954 SC 15 ⁶1975 (4) SCC 511 ⁷1981 (2) SCC 752 ⁸2002 (6) SCC 81
⁹2003 (7) SCC 643 ¹⁰2004 (4) SCC 158 ¹¹2004(10) SCC 443 ¹²2003 (12) SCC 449
¹³2004 (10) SCC 120 ¹⁴2006(10)SCC 601