SUPREME COURT OF INDIA

Shanmugam

Vs.

State Rep. by Inspector of Police, T. Nadu

Crl.A.No.1623 of 2009

(T.S. Thakur and Vikramajit Sen JJ.)

11.09.2013

JUDGMENT

T.S. THAKUR, J.

1. This appeal arises out of a judgment and order dated 24th August, 2006 passed by the High Court of Judicature of Madras at Madurai, whereby Criminal Appeal No.857 of 2004 filed by the appellants and two others against their conviction for murder and sentence of life imprisonment has been dismissed.

2. On 5th January, 1999 at about 3.00 p.m. the deceased Asokan was one amongst 200 other mourners who had assembled to attend the cremation of a near relative who had passed away and was being cremated at village Veerappanayakan Patti. Adikesavan (PW-1), Rajendran (PW-4), Vellingiri (PW- 5) and Paneer (PW-10) were also among those present at the cremation ground. The prosecution case is that, that on account of strained relations between the accused and the deceased arising out of rivalry in relation to smuggling of sandalwood by the two groups, there was, a few days earlier to the date of occurrence, a quarrel between them which had turned ugly with the two groups assaulting each other. The accused were, therefore, looking for an opportunity to get even with deceased which opportunity came their way when the deceased who was a resident of another village joined the funeral and the cremation ceremony. It so happened that no sooner were the mortal remains of the departed soul consigned to flames, Perumal one of the accused (since deceased) saw Asokan standing near a coconut tree in the former's land, and started moving towards him with the remaining four accused including the appellants in this appeal. Perumal who had picked up a stick gave a blow to the deceased on the head because of which the deceased collapsed to the

ground. Shanmugam (A-1), appellant in the present appeal, in the meantime picked up a stone and hit the deceased on his face repeatedly while Mahendran (A-2) caught hold of his legs. Raghu (A-3) squeezed the testicles of Asokan while Ramajayam (A-4), appellant No.2 in this appeal, assaulted the deceased with a heavy stone on his head exclaiming "with that he must go". The injuries so inflicted crushed Asokan's head and killed him on the spot. Adikesavan (PW-1), Rajendran (PW- 4) and Vellingiri (PW-5) tried to intervene but were threatened by the accused persons that they would also meet the same fate. Scared, the witnesses ran for safety while the accused made their escape good. Those attending the cremation also ran away in panic. Adikesavan (PW-1) returned to the crime scene and found his younger brother lying dead with his head shattered. He informed Sudha (PW-3) about the incident and rushed to Harur to meet his younger brother Ramalingam (PW-2) who accompanied him back to the crime scene in a car. The incident was then reported at Harur Police Station in writing by Adikesavan (PW-1). The police swung into action, conducted an inquest and seized the stick and stones used by the accused persons for the assault and the blood stained clothes of the deceased. A chargesheet was eventually filed by the Investigating Officer that led to their trial before the Additional Sessions Judge, Dharamapuri who recorded the statements of as many as 11 witnesses produced on behalf of the prosecution. The defence did not choose to lead any oral evidence.

3. The Trial Court eventually came to the conclusion that the prosecution had brought home the guilt to the accused persons and accordingly convicted them for murder punishable under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life. Aggrieved by the judgment and order passed by the Trial Court the appellants and two other surviving accused persons filed Criminal Appeal No.857 of 2004 before the High Court of Judicature of Madras at Madurai, Perumal the fifth accused having passed away in the meantime. By its judgment and order impugned in this appeal the High Court has concurred with the view taken by the Trial Court and found the conviction and sentence to be perfectly justified upon a reappraisal of the evidence adduced before the Trial Court. The present appeal filed by two out of the four accused persons calls in question the correctness of the said judgment and order of the High Court.

4. We have heard learned counsel for the parties at considerable length who have taken us through the evidence on record. The Trial Court as also the High Court have both placed reliance upon the deposition of Adikesavan (PW-1) who was an eye witness to the occurrence. The Courts below have also noted that while Rajendran (PW-4) and Vellingiri (PW-5) have turned hostile, they have nevertheless supported the prosecution case in the past. The Courts also found that

enmity between the deceased and the accused persons on account of smuggling of sandalwood was the motive for the commission of the crime which motive was satisfactorily established on the evidence adduced at the trial.

5. Appearing for the appellants Mr. Srilok N. Rath made a three-fold submission before us. Firstly, it was contended that there was un-explained delay not only in the lodging of the first information report but also in dispatching a copy of the same to the jurisdictional Magistrate. In the absence of any cogent and acceptable explanation for the delay the prosecution case was rendered doubtful. Secondly, it was contended that the prosecution case rests entirely on the deposition of Adikesavan (PW-1) who was closely related to the deceased and could not be said to be an independent witness. Relying upon the decision of this Court in Mahtab Singh & Anr. v. State of U.P. (2009) 13 SCC 670, it was contended that although the deposition of an interested witness was not by itself inadmissible in evidence, prudence demanded that his testimony be scrutinized more closely and carefully. A careful evaluation of the evidence of Adikesavan (PW-1) did not, according to the learned counsel, inspire confidence which was full of embellishments and improbabilities sufficient to demolish his credibility.

6. Thirdly, it was contended that even if the prosecution case was accepted in toto the offence could not go beyond Section 304 Part II of the IPC. Reliance was in support placed by the learned counsel upon the decision of this Court in Camilo Vaz v. State of Goa (2000) 9 SCC 1.

7. The incident in the case at hand took place at around 3.00 p.m. on the 5th of January, 1999 in a village. The first information report about the same was lodged by Adikesavan (PW-1) at 10.00 p.m. on the same day. The contention urged on behalf of the appellant was that the delay of seven hours in the lodging of the report by Adikesavan (PW-1) was inordinate in the facts and circumstances of the case and ought to render the prosecution version suspect on that count itself. We do not think so. Delay in the lodging of the FIR is not by itself fatal to the case of the prosecution nor can delay itself create any suspicion about the truthfulness of the version given by the informant just as a prompt lodging of the report may be no guarantee about its being wholly truthful. So long as there is cogent and acceptable explanation offered for the delay it loses its significance. Whether or not the explanation is acceptable will depend upon the facts of each case. There is no cut and dried formula for determining whether the explanation is or is not acceptable. Having said that, Courts need to bear in mind that delay in lodging of the FIR deprives it of spontaneity and brings in chances of embellishments like exaggerations and distortions in the story which if narrated at the earliest point of

time may have had different contours than what is eventually recorded in a delayed report about the occurrence. On the flipside a prompt lodging of the report may not carry a presumption of truth with it. Human minds are much too versatile and innovative to be subject to any such strait-jacket inferences. Embellishments, distortions, and false implication of innocence may come not only out of deliberation which the victim party may hold among themselves or with their well-wishers and supporters, but also on account of quick thinking especially when all that it takes to do so is to name all those whom the informant or his advisors perceive to be guilty or inimical towards them. Decisions of this Court as to the advantage of a report lodged promptly and possibility of embellishment in cases where the report is delayed, as also the approach which the Courts ought to adopt while considering the effect of such delay in a given case are a legion and the principles of law much too well settled to require any elaboration or re- statement. Reference can all the same be made to Meharaj Singh v. State of U.P (1994) 5 SCC 188, Thulia Kali v. State of Tamil Nadu (1972) Crl.LJ 1296, State of Himachal Pradesh v. Gian Chand (2001) 6 SCC 71, Ramdas and Ors. v. State of Maharashtra (2007) 2 SCC 170, Kilakkatha Parambath Sasi and Ors. v. State of Kerala AIR 2011 SC 1064 and Harivandan Babubhai Patel v. State of Gujarat (2013) 7 SCC 45.

8. There is, in the case before us, delay of hardly a few hours which the prosecution has explained to the satisfaction of the Trial Court and the High Court both. Adikesavan (PW-1), it appears, returned to the place of occurrence after the accused persons had left only to find his brother dead with his face and head severely injured. According to the witness, he travelled to Harur to inform his brother- Ramalingam (PW-2) who accompanied him to the place of occurrence in a car and then to the police station where Adikesavan (PW-1) lodged the first information report. Some time was obviously wasted in this process of travel to and from the place of occurrence and to the police station for lodging the report. The report gave a detailed account of the incident. No deficiency in terms of the omission of the names or the role played by the accused was pointed out to us by the learned counsel appearing for the appellants. The version given by Adikesavan (PW-1) has remained consistent with the version given in the first information report. There is, in that view, no reason for us to disbelieve the prosecution case only because the first information report was delayed by a few hours especially when the delay has been satisfactorily explained. The first limb of the argument advanced by counsel for the appellants has, therefore, failed and is hereby rejected.

9. That brings us to the question whether Adikesavan (PW-1) was a reliable witness. The contention, as seen earlier, is that since the witness happened to be the

brother of the deceased, he must be taken as a partisan witness on account of his close relation with the victim. The difference between a partisan witness on one hand and an interested witness who is unrelated to the victim but has some beneficial interest in the outcome of a litigation on the other, remains obscure. This Court in Raju @ Balachandran and Ors. v. State of Tamil Nadu AIR 2013 SC 983, very recently attempted a possible categorization of witnesses and identified broadly four such categories in the following words:

> "33. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required."
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> (emphasis supplied)

10. As observed by this Court far more important than categorization of witnesses is the question of appreciation of their evidence. The essence of any such appreciation is to determine whether the deposition of the witness on to the incident is truthful hence acceptable. While doing so, the Court can assume that a related witness would not ordinarily shield the real offender to falsely implicate an innocent person. In cases where the witness was inimically disposed towards the accused, the Courts have no doubt at times noticed a tendency to implicate an innocent person also, but before the Court can reject the deposition of such a witness the accused must lay a foundation for the argument that his false implication springs from such enmity. The mere fact that the witness was related to the accused does not provide that foundation. It may on the contrary be a circumstance for the Court to believe that the version of the witness is truthful on the simple logic that such a witness would not screen the real culprit to falsely implicate an innocent. Suffice it to say that the process of evaluation of evidence of witnesses whether they are partisan or interested (assuming there is a difference

between the two) is to be undertaken in the facts of each case having regard to ordinary human conduct prejudices and predilections.

11. The approach which the Court ought to adopt in such matters has been examined by this Court in several cases, reference to which is unnecessary except a few that should suffice. In Dalip Singh v. State of Punjab (1954) 1 SCR 145 this Court observed:

> "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."
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> (emphasis supplied)

12. The above was followed by this Court in Masalti v. State of U.P. (1964) 8 SCR 133 where this Court observed:

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautions in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

13. We may also refer to the decision of this Court in Darya Singh v. State of Punjab (1964) 3 SCR 397 and a more recent reminder of the legal principles in

Takdir Samsuddin Sheikh v. State of Gujarat and Anr. (2011) 10 SCC 158 where this Court observed:

> "(i) While appreciating the evidence of witness considering him as the interested witness, the court must bear in mind that the term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason. (Vide: Kartik Malhar v. State of Bihar (1996) 1 SCC 614; and Rakesh and Anr. v. State of Madhya Pradesh JT 2011 (10) SC 525).
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> (ii) This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. (See: Vadivelu Thevar v. The State of Madras AIR 1957 SC 614; Sunil Kumar v. State Govt. of NCT of Delhi (2003) 11 SCC 367;Namdeo v. State of Maharashtra (2007) 14 SCC 150; and Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638)."
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> (emphasis supplied)

14. To the same effect are the decisions of this Court in Amit v. State of Uttar Pradesh (2012) 4 SCC 107, Bur Singh and Anr. v. State of Punjab AIR 2009 SC 157, and Sate of H.P. v. Kishanpal and Ors. 2008 (11) SCALE 233.

15. In the case at hand the deposition of Adikesavan (PW-1) has been found to be reliable by the Trial Court as also the High Court, no matter he was related closely to the deceased. There is nothing in the cross- examination of the witness that could be said to have adversely affected the credibility of this witness nor is there anything to suggest that apart from his being a relative of the deceased he had any

other reason to falsely implicate the accused persons or any one of them. The version given by the witness as to the manner in which the deceased was done to death by the accused persons gets support from the medical evidence led in the case. The doctor conducting the post-mortem examination found the death to be homicidal caused by the following injuries on the person of the deceased:

> "External Injuries: Face – Mouth lacerated. Lower lip, lower jaw, nose – lacerated. Blood stained liquid oozing from the mouth. Mandible and all the teeth i the lower jaw broken into pieces. Neck – A skin colour contusion over the neck present. Limbs – contusion over right shoulder. Abdomen – Left testicle crusted and exposed of the skin.
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> Internal Examination: Skull – Base of skull fracture in the post cranial fossa crossing the midline. Bain – Congested and contained about 100 ml of clotted blood. Neck – Hyoid bone intact. Thorax – Sternum intact. No rib fracture. Lungs – Congested. Right – 450 gms. Left – 420 gms. Heart – Congested. Empty 150 gms. Liver – Congested. Intact – 1100 gms. Kidney – Congested – intact – 120 gms. Each. Bladder – Empty. Stomach – contains about 50 gms. Of undigested food. Spleen – Congested – 90 gms."

16. It is noteworthy that the other two witnesses namely Rajendran (PW-4) and Vellingiri (PW-5) also supported the prosecution case, no matter only in part. The fact that the deceased was present at the cremation ground where the occurrence took place is proved from their depositions as well. It is equally important to note that one of the accused persons, namely, Perumal (since deceased) had according to these two witnesses also picked up a stick and assaulted the deceased on his head as a result of which the deceased had collapsed to the ground. The rest of the prosecution case, on the role played by the other accused persons in the killing of the deceased, has not been supported by these two witnesses who were declared hostile and cross-examined by the prosecution. Even so, the prosecution case as to the manner in which assaults started and the place of occurrence was proved by the deposition of Adikesavan (PW-1) whom we find no reason to disbelieve.

17. That brings us to the contention urged on behalf of the appellants that even if the prosecution version is accepted in toto, the case falls under Section 304 Part II IPC and not Section 302 IPC for which the appellants have been convicted. There is, in our view, no merit in that contention either. We say so because of the manner in which the deceased was assaulted and the brutality of the assault shows that the accused formed an unlawful assembly with the object of killing the deceased. The blow landed on the deceased by Perumal had brought the deceased to the ground

whereupon the accused continued brutalising the deceased with the help of stones, in the process crushing his head and squeezing his testicles. We have no manner of doubt that the nature of injuries caused to the deceased were clearly indicative of the accused having had the intention of killing him. The use of the words "with that he must go" by appellant No.2 is only a manifestation of that intention.

18. There is, therefore, no room for altering the conviction from Section 302 to Section 304 Part II, IPC as argued by the learned counsel.

19. In the result this appeal fails and is hereby dismissed.