

VITHAL PUNDALIK ZENDGE
v.
STATE OF MAHARASHTRA
(Criminal Appeal No.1026 of 2007)

NOVEMBER 19, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860:

ss. 302/149, 144 and 148 – Murder – Plea that court should not rest conviction on the evidence of solitary witness – HELD: In the instant case, the roles played by each of the accused persons have been elaborately described by the witness – Her presence on the scene of occurrence has been accepted – Deceased was her brother and accused persons were known to her – Minor discrepancies in her statement have rightly been held by trial court and High Court of no consequence – Conviction and sentence upheld – Evidence Act, 1872 – s.134.

Evidence Act, 1872:

s.134 – Number of witnesses – HELD: As a general rule, court can and may act on testimony of a single witness though uncorroborated – Propositions of law in this regard culled out – In the instant case, testimony of sister of deceased found credible – Penal Code, 1860 – s.302/149.

The appellant (A-1) and eight others were convicted by the trial court, *inter alia*, u/s 302 read with s.149 IPC for causing the death of the brother of PW-1 and sentenced to imprisonment for life. Three of the convicts appealed to the High Court, but in vain.

A In the instant appeal filed by A-1, it was primarily contended for the appellant that the evidence of the solitary witness, PW-1, did not inspire confidence and, therefore, it would be unsafe to rest the conviction thereon.

B Dismissing the appeal, the Court

HELD: 1.1. The principle underlying s.134 of the Evidence Act, 1872 is that evidence has to be weighed and not counted. It is not the number or quantity, but the quality that is material. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. On a consideration of the relevant authorities and the provisions of the Evidence Act, the propositions of law that emerged out as firmly established are: (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character; (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of testimony of the single witness itself requires, as a rule of prudence, that corroboration should be insisted upon; and (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. [Paras 6 and 9] [431-D-E; 429-E-H; 430-A]

G *Jagdish Prasad vs. State of M.P.* AIR (1994) SC 1251; *Vadivelu Thevar vs. The State of Madras* AIR (1957) SC 614; *Joseph vs. State of Kerala* (2003) 1 SCC 465; *Yakub Ismailbhai Patel vs. State of Gujarat* (2004) 12 SCC 229; *Bhimappa Chandappa Hosamani & Ors. vs. State of Karnataka* (2006) 11 SCC 323 and *Kunju @ Balachandran*

vs. State of Tamil Nadu (2008) 2 SCC 151, relied on.

1.2. In the instant case, PW 1 has elaborately described the role played by each of the accused. She has stated that she was at a distance of about 12 ft. from the place of occurrence. Her presence on the scene of occurrence has been accepted. Since the accused persons were known to her, a minute difference in the distance is really of no consequence. Inspite of incisive cross-examination, a few contradictions of very minor nature have been elicited, which are not sufficient to throw out her evidence. Such discrepancies have been rightly held by the trial court and the High Court to be of no consequence. as she has been a witness of ghastly crime of her brother's brutal murder. [Para 11, 12 and 14] [431-G-H; 432-A; 433-B]

Case Law Reference:

AIR (1957) SC 614	Relied on	Para 8
AIR (1994) SC 1251	Relied on	Para 9
(2003) 1 SCC 465	Relied on	Para 10
(2004) 12 SCC 229	Relied on	Para 10
(2006) 11 SCC 323	Relied on	Para 10
(2008) 2 SCC 151	Relied on	Para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1026 of 2007.

From the final Judgment and Order dated 1.8.2006 of the High Court of Judicature at Bombay in Criminal Appeal No. 703 of 2000.

Manish Pitale and Chander Shekhar Ashri for the Appellant.

Ravindra Keshavrao Adsure and Gautam Godara for the

A Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court dismissing the three appeals preferred by the present appellant and two other co-accused. Criminal Appeal No.703 of 2000 was filed by the present appellant while the co-accused Kisan filed Criminal Appeal No. 701 of 2000 and Milind Dhondur Gaikawad filed Criminal Appeal 702 of 2000. The accused persons faced trial for alleged commission of offences punishable under Sections 144, 148, 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The appellant faced trial alongwith 8 others. Appellant was first accused (A-1). The trial Court held that all the accused persons were guilty and they were awarded life sentence in respect of offence punishable under Section 302 read with Section 149 IPC and different other sentences which were directed to run concurrently by the learned Sessions Judge, Greater Bombay in Sessions Case No.248 of 1996. Only three appellants questioned the conviction and the sentence and three appeals were disposed of by the impugned judgment as noted above.

2. Prosecution version which led to the trial of the accused persons is essentially as follows:

On 15.12.1995 at about 2330 hrs. complainant Sahida Shaikh (PW1) was going to Sulabh Sauchalaya (Public Toilet) situated at Prabuddha Nagar Hutments, Suweree, Wadala, Bombay-15. When she was passing near the house of Subhash Kharkhare, she noticed Vitthai, Shiva, Krishna, Mohd. Ali, Nitin, Milind and Sandeep standing near the heap of garbage near the said Sulabh Sauchalaya. The B.M.C. street light and the lights of nearby houses were sufficient for the purpose of identification. She also noticed that Babu came out of the house of Subhash Khandale keeping his hands around the shoulder of Yasin (hereinafter referred to as 'deceased') and

they were talking and going towards the said Sauchalaya. She was at a short distance. The said persons who were standing near the garbage heap, came near the Yasin and Babu. Then Babu removed his hand from the shoulder of Yasin and started abusing Yasin. Yasin objected to that. At that time Milind caught right hand of Yasin, Sandeep caught left hand of Yasin, Nitin caught head and hairs of Yasin from behind. Then Babu removed a sharp edged weapon from under his pant and shirt and started giving blows on the stomach of Yasin. Shiva, also took out sharp edged weapon which he was hiding on his person and said "Maro Sale Ko", and gave blows with the said weapon on the stomach and different parts on Yasin. Vitthal, Mohd. Ali and Krishna also gave blows with the weapons in their hands. Yasin was shouting "Ma Bachao, Bachao", then he went little ahead and fell down near Diamond Electric Store. One taxi was coming from the direction of Hindu Cemetery. Shiva, Vitthal, Babu, Krishna, Mohd. Ali sat in the said Taxi, threatened the driver of the Taxi, Nitin got down from the taxi and said taxi sped away towards the Jarbani Road. Nitin, Milond and Sandeep ran away towards the Cemetery. Hearing her shouts, her husband Mohd. Naseem, Subhash Khandare, Salim, Naresh and other persons came running there. Salim and Naresh removed Yasin to the KEM Hospital. She also went to the Hospital with her mother and came to know that Yasin had expired. EPR Constable Vishwas B. Sarate (PW15) was on duty at KEM Hospital, recorded the report of said incident which is at Exh.P-77 and passed on the information to PC22794 who was on duty at RAK Marg Police Station. PSI Chorge (PW12) who was Station House Officer on duty went to the KEM Hospital, recorded the statement of complainant PW-1 obtained running C.R. number which was 431/95, scribed the inquest report of Yasin which is at Exh.P-22 [admitted under Section 294 of Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.').] Thereafter, police party visited scene of offence and scribed the spot panchanama which is Exh.P-32. After returning to the Police Station, he treated the statement of Bahida as FIR, filled in the proforma of FIR (Exh.P-16A) and proceeded

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A with the further investigation.

At about 8.20 a.m. on 16.12.1995, police also filled in ADR form, statements of Naresh, Salim and Amina. On 16.12.1995 the case was marked to P I Palele for further investigation who recorded the statements of (i) Kallu Verma, (ii) Kailash Bansode, (iii) Shankar Delare, (iv) Kishore Solanki, (v) Moh. Nasim, (vi) Subhash Khandare, (vii) Mamud Bhatkar, (viii) Aslam Mullu, (ix) Nagu Chatu, (x) Salim Shaikh (xi) Naresh, (xii) Fakir Shaikh and (xiii) Amina Yusuf. On 16.12.1995 police arrested accused No.6 Nitin Vasu Kadam and accused No.8 Sandeep Sahadev Jaitpkar. On 17.12.1995, they arrested accused No.2 Shiva Yashvant Tambe. Accused No.5 Mohammed Ali Ismail Aamadare, accused No.7 Milind Dhondu Gaikwad. On 29.12.1995, they arrested accused No. 1 Vitthal Pundalik Zondage, accused No.4 Vilas & Babu Bhagurao Shirke. On 15.01.1996, police recovered Gupti- (Art. M-8) at the instance of accused No.1 as per the panchanama Exh.P-42. On 16.01.1996, police recovered dagger (Art.M-9) at the instance of accused No.3 Kisan Pandurang Gavli as per the panchanama Exh.P-27. On 06.02.1996 police sent all the muddamal articles to Chemical Analyst. Police received report of muddamal articles which is at Exh.P-45.

On 12.2.1996 police charge sheeted all the accused before the learned Metropolitan Magistrate 13th Court, Bombay as per charge sheet and on 26.2.1996 their case was committed to the Court of Sessions. Since accused persons abjured guilt, trial was held.

The prosecution has examined 15 witnesses many of whom are stated to be eye witnesses, except PW-1 who is the sister of the deceased, others resiled from their statements made during investigation.

The trial Court after analyzing the evidence of PW-1 found her to be a trustworthy witness and relied on her evidence and rejected the plea of the accused persons that prosecution

version cannot be accepted only on the basis of PW-1's evidence. A

Questioning their conviction appeals were filed before the High Court and as noted above the High Court affirmed the conclusions of the guilt and the sentences imposed. B

3. In support of the appeal, primary stand of learned counsel for the appellant was that even though the conviction is maintainable on the basis of evidence of solitary witness that witness's version must be free from any blemish. In the instant case, the evidence of PW-1 does not inspire confidence. C
Primarily it was submitted that when there is a solitary witness's evidence it would be unsafe to rest the conviction thereon.

4. Learned counsel for the State on the other hand supported the judgments of the trial Court and the High Court. D

5. The law relating to the approach of the courts when prosecution version essentially rests on the testimony of a single witness has been highlighted by this Court in many cases.

6. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act') the following propositions may be safely stated as firmly established: E

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. F
One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases G
where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character. H

A (3) Whether corroboration of the testimony of a
single witness is or is not necessary, must depend upon
facts and circumstances of each case and no general rule
can be laid down in a matter like this and much depends
upon the judicial discretion of the Judge before whom the
B case comes.

7. Therefore, there is no hesitation in holding that the
contention that in a murder case the court should insist upon
plurality of witnesses, is much too broadly stated.

C 8. In *Vadivelu Thevar v. The State of Madras* (AIR 1957
SC 614) this Court had gone into this controversy and divided
the nature of witnesses in three categories, namely, wholly
reliable, wholly unreliable and lastly, neither wholly reliable nor
wholly unreliable. In the case of the first two categories this Court
D said that they pose little difficulty but in the case of the third
category of witnesses, corroboration would be required. The
relevant portion is quoted as under:

E '11. ... Hence, in our opinion, it is a sound and well-
established rule of law that the court is concerned with the
quality and not with the quantity of the evidence necessary
for proving or disproving a fact. Generally speaking, oral
testimony in this context may be classified into three
categories, namely:

F (1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

G 12. In the first category of proof, the court should have no
difficulty in coming to its conclusion either way – it may
convict or may acquit on the testimony of a single witness,
if it is found to be above reproach or suspicion of
interestedness, incompetence or subornation. In the
H second category, the court equally has no difficulty in

coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.'

9. *Vadivelu Thevar* case (supra) was referred to with approval in *Jagdish Prasad v. State of M.P* (AIR 1994 SC 1251). This Court 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 Indian Evidence Act, 1872 (in short 'the Evidence Act'). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. 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. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

10. The position has been re-iterated in large number of cases. Reference may be made to *Joseph v. State of Kerala* (2003 (1) SCC 465), *Yakub Ismailbhai Patel v. State of Gujarat* (2004 (12) SCC 229), *Bhimapa Chandappa Hosamani and Ors. v. State of Karnataka* (2006 (11) SCC 323) and *Kunju @ Balachandran v. State of Tamil Nadu* [2008(2)SCC 151].

11. Coming to the evidence of PW-1, the roles played by accused persons have been elaborately described in detail. She has described the role played by each of the accused persons. She has stated that she was at a distance of about

A 12 ft from the place of occurrence. Interestingly, a suggestion in cross examination was given that distance was about 20 ft. In other words, her presence has been accepted. Since the accused persons were known to her, a minute difference in the distance is really of no consequence.

B 12. She has deposed that she knew all the accused as they were the residents of the same locality where she lived since her birth. On 15th December, 1995 at about 11.30 p.m. when she went to attend the nature's call near the public toilet, she saw accused No.4 with her brother, the deceased. The
C the accused No.4 had kept his hand on her brothers' shoulder and they were going towards the toilet. They were talking loudly and accused No.4 was abusing her brother. Then he started assaulting her brother with a long weapon like gupti. All the other accused were standing near the garbage bin. She was
D near the toilet. When accused No.4 was assaulting her brother, all the other accused who were standing close by came near her brother. They all also caught him and assaulted him with weapons in their hands. Accused Nos.7 and 8 caught his hands, accused No.6 caught him by the hand, accused Nos.1,
E 2, 3 and 5 started assaulting him with weapons in their hands which were like gupti. This is in essence prosecution case.

13. She has further deposed that she was at a distance of about 12 ft. from the place of the incident. She stood there and watched the incident. At that time the street lights were on and there were 2 lights on the spot. She as well as her brother shouted "Bachao Bachao". Nobody came for help. Her brother fell down and the assailants ran away. A taxi came and accused
F Nos. 1 to 4 fled in that taxi. She rushed to R.A.K. Marg Police Station which was at a 5 minutes walking distance to meet the officer in charge. Her mother also came to the police station.
G The police officer went to KEM Hospital. She returned to the spot and found that her brother was not there. She learnt that he was removed to KEM hospital and she also went to the hospital. Her brother had died. The police recorded her
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statement in the hospital. That was treated as the FIR, marked Exhibit-16.

14. In spite of incisive cross examination a few contradictions of very minor nature have been elicited. They are not sufficient to throw out her evidence. Such discrepancies have been rightly held by the trial Court and the High Court to be of no consequence as she has been a witness of ghastly crime when in front of her, her brother was brutally murdered.

15. Above being the position we find no merit in this appeal which is accordingly dismissed.

R.P.

Appeal dismissed.