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April 12.

VADIVELU THEVAR

v.

THE STATE OF MADRAS

(with connected appeal)

(JAGANNADHADAS, B. P. SINHA and P. B. GAJENDRAGADKAR JJ.)

Murder—Conviction on the testimony of a single witness—Propriety—Capital sentence, if appropriate—Extenuating circumstance—Indian Evidence Act (I of 1872), s. 134.

The appellants were charged with murder and convicted on the sole testimony of a witness. The first appellant was sentenced to death and the second to five years' rigorous imprisonment. It was contended for them, inter alia, that the conviction and sentences should not be upheld because in a case involving a charge of murder the court should not, on the ground of prudence, convict an accused person upon the testimony of a single witness, and, in any case, impose the extreme penalty of law.

Held, that the question whether in such a case the court could convict him depended upon the facts and circumstances of the case and unless corroboration was a statutory requirement, a court could act upon such evidence, though uncorroborated, 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 child witness, an accomplice or any others of an analogous character.

Where the court has recorded an order of conviction the question of sentence must be determined, not by the volume or character of the evidence adduced, but on a consideration of any extenuating circumstances which could mitigate the enormity of the crime.

Mohamed Sugal Esa Mamasan Rer Alalah v. *The King,* A.I.R. (1946) P.C. 3 and *Vemireddy Satyanarayan Reddy and three others* v. *The State of Hyderabad,* (1956) S.C.R. 247, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 24 and 25 of 1957.

Appeals by special leave from the judgment and order dated July 25, 1956, of the Madras High Court in Criminal Appeals Nos. 247 & 248 of 1956 and Referred Trial No. 41 of 1956 arising out of the judgment and order dated March 28, 1956 of the Court of Sessions, East Tanjore Division at Nagapatam, in case S.C. No. 5 of 1956.

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H. J. Umrigar and *S. Subramanian,* for the appellants.

P. S. Kailasham and *T. M. Sen,* for the respondent.

1957. April 12. The Judgment of the Court was delivered by

SINHA J.—These two appeals by special leave, which arise out of the same occurrence, are directed against the Judgment and Order dated July 25, 1956, of the Madras High Court, confirming the sentence of death passed by the Court of Sessions, East Tanjore Division, at Nagapattinam, under s. 302 of the Indian Penal Code, against appellant in Criminal Appeal No. 24 of 1957, for the murder of Kannuswami, and modifying the order of conviction and sentence under s. 302, read with s. 109 of the Indian Penal Code, to one under s. 326, Indian Penal Code, and reducing the sentence of imprisonment for life to one for 5 years, in respect of the appellant in Criminal Appeal No. 25 of 1957. In the course of this judgment, we shall call the appellant in Criminal Appeal No. 24 of 1957, as the "first appellant", and the appellant in Criminal Appeal No. 25 of 1957, as the "second appellant".

The occurrence which was the subject-matter of the charges against the two appellants took place at about 11-30 p.m. on November 10, 1955, at Muthupet, in front of the tea stall of Kannuswami, husband of Shrimati Dhanabagyam—prosecution witness No. 1—who will be referred to, in the course of this judgment as the "first witness", and who is the principal witness for the prosecution, because, as will presently appear, the prosecution case and the convictions and sentences of the appellants depend entirely upon her testimony.

The occurrence took place in the immediate vicinity of a cinema-house in which the second show was in progress at the time of the alleged cold-blooded murder. As there were no customers at that time at the tea shop run by Kannuswami, his wife called him for his dinner to be served to him behind the tea stall, as the husband and wife used to live there. Kannuswami was about to attend to the call for dinner when

an old man came into the shop and asked for a cup of tea. When Kannuswami got busy preparing the tea, the two appellants rushed into the premises. The old man—the intending customer—naturally ran away, and the two accused dragged Kannuswami out of the shop on to the road-side; and the first appellant gave him several blows on the front part of his body in the region of the chest with an *aruval*—a cutting instrument about 2 feet long including the handle. Kannuswami fell down on his back and cried out for help. His wife, the only other inmate of the house, tried to come to his rescue by raising and putting his head into her lap after the two accused had left him. But soon after, perhaps, realising that Kannuswami was not dead as a result of the first blows, as deposed by the wife, both the accused returned. Kannuswami's wife who figures in court as the sole witness to the killing, placed his head on the ground and went and stood on the steps of the tea stall. The first appellant this time, made the body of Kannuswami lie with face downwards and gave a number of cuts in the region of the head, the neck and back. These injuries were such as to cause instantaneous death. At the time of the second assault, according to the evidence of the first witness, Shunmuga Thevar—Prosecution Witness No. 3, one of the proprietors of the cinema-house—came and remonstrated with the accused but to no purpose. After inflicting the injuries, both the accused ran away. According to the testimony of the first witness, it was the first appellant, the second accused (A-2 in the record), who inflicted cutting injuries with the *aruval*. The second appellant, the first accused (A-1 in the record), was standing nearby at the time the cutting injuries were inflicted. There were two electric lights burning in the tea shop, a Panchayat Board light burning on the road, as also a light burning on the pathway leading to the cinema-house. The wife of the deceased, finding her housband thus murdered, went and told Ganapathi—Prosecution Witness No. 4—who had a tea stall on the other side of the road, and informed him as to what had taken place. He asked her to lodge information of the

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occurrence at the Police Station. She then went to the Mathupet Police Station, but found it shut. She went to the house of the Sub-Inspector of Police, who took her to the Police Station, and recorded her statement as the first information report (Exhibit P. 1). After recording the first information report, the Sub-Inspector came along with the first informant to the scene of occurrence. He held an inquest early in the morning.

At the trial, the Prosecution examined, besides the widow of the murdered man (P.W.1), P.W. 2—an assistant in the tea shop of Ganapathi Thevar, P.W. 3—one of the proprietors of the cinema-house and P.W. 4—Ganapathi who kept another tea stall near the cinema-house, in support of the prosecution case. P.W. 2—Singaram—testified to the occurrence and stated that he had seen Vadivelu 'cut' Kannuswami and Chinniah standing by the side of Vadivelu, a few feet away ; but he added that the accused persons were not those concerned with the crime though they bore the same names. The Public Prosecutor was permitted to cross-examine this witness who admitted that he knew that the Police were searching for the accused in the dock and that he did not tell the Police that these were not the persons who had committed the murder. He went to the length of admitting that he did not tell anybody that the accused in the dock were not the persons who had committed the murder and that it was in the committal court that he stated, for the first time, that the accused persons were not concerned with the crime. He also admitted that at the time of the occurrence, lights were burning at the place of occurrence, in the tea shop and in the theatre. P.W. 3, one of the proprietors of the cinema-house, when examined in court, admitted that he had been examined by the police two days after the occurrence, but stated that he did not tell the Police that he had seen the accused assaulting Kannuswami. It appears that, though the record of the examination-in-chief of this witness would itself indicate that the Public Prosecutor had put questions to him in the nature of cross-examination, yet it is not recorded, unlike the record of the depositions

of P.W. 2 and P.W. 4, that this witness had been declared hostile and the Public Prosecutor had been permitted to cross-examine him. That appears to be a slip of the learned Sessions Judge as he had been so treated even in the committal court. The Investigating Sub-Inspector, P.W. 14, stated, with reference to his diary, that P.W. 3 had stated before him that he had seen accused No. 2 cutting the deceased on the head and neck with an *aruval,* and accused No. 1 standing by the side of the second accused. Witness No. 4 for the Prosecution—Ganapathi—who ran a tea stall near the cinema-house, about 50 to 60 feet away from the tea stall of the deceased Kannuswami, stated in court that the first witness came to him weeping and saying that Chinniah and Vadivelu Thevar had cut her husband, but added that the two accused in court were not these persons. Thus, whatever may have been the previous statements of the prosecution witnesses 2 to 4, aforesaid, their evidence in court does not directly support the prosecution case. The orders of conviction and sentence, as passed by the courts below, as indicated above, rest solely on the testimony of the first witness.

It has been argued by the learned counsel for the appellants that the conviction and sentences of the appellants should not be upheld because they rest on the sole testimony of the first witness, particularly, because, it is further argued, her testimony is not free from all blemish. In this connection, her statement in court that it was the second accused (first appellant) who gave the number of cut injuries with the *aruval* to the deceased Kannuswami, was challenged in cross-examination. She has been cross-examined with reference to her statement (Exhibit D-2) recorded by the committing Magistrate, and she has categorically stated :

"Accused 1 had no weapon of any kind with him. He did not give any cut. I have not stated in the committal court that accused 1 continued to cut even after Shanmugham Thevar asked him not to cut." Exhibit D-2 is in these terms :

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"Even while he was asking not to cut, accused 1 was cutting. Soon after, accused 1 stopped cutting and went away."

With reference to the statement of the first witness, as recorded in Exhibit D-2, the learned Sessions Judge has observed that it was a mistake of recording by the committing Magistrate. We have looked into the whole evidence of the first witness, as recorded by the committing Magistrate—not printed in the record, but supplied to us by the learned counsel for the appellants—and in our opinion, there is no doubt that the learned Sessions Judge was correct in his conclusion that the recording by the Magistrate is defective in the sense that accused 1 has been recorded in place of accused, 2, inasmuch as, throughout her deposition, the first witness had consistently stated that it was accused 2 who actually used the deadly weapon against her husband and that accused 1 was only aiding and abetting him and lending him strength by his presence. That this conclusion is well-founded, is also substantiated by the state of the record of the appeal in the High Court. Each of the two appellants in the High Court filed a separate Memorandum of Appeal through his own counsel. In neither of the Memoranda of Appeal, any ground has been taken that the first witness had materially contradicted herself with reference to her previous statement in the committal court. Her testimony was assailed only as 'interested, artificial and unnatural'. It is not even suggested that the learned Sessions Judge's conclusion in respect of the recording by the committing Magistrate (Exhibit D-2) was not based on any material. When the matter was argued before a Bench of the High Court, there is no indication in the judgment that any point was sought to be made of this alleged serious discrepancy in the statement of the first witness at different stages. In the High Court, it was sought to be argued only that she was an interested witness though her testimony throughout had been consistent, as will appear from the following observations of the High Court

"To prove that it was the two accused that caused these injuries to the deceased, the prosecution put forth as many as four witnesses. On these four witnesses, P.Ws. 2, 3 and 4 turned hostil both in the committal court as also in the Sessions Court. The only witness that remained constant throughout was P.W. 1 who is no other than the wife of the deceased."

The same was the position with reference to the petition for leave to appeal to this Court filed in the High Court. It was a joint petition on behalf of both the appellants, and as many as 13 grounds had been taken. There is not even a suggestion that the testimony of the first witness was vitiated by any such discrepancy as has been sought to be made out in this Court. It was after the High Court refused to grant the necessary certificate that for the first time, in the petition for special leave to appeal, filed in this Court, the ground is taken that the High Court failed to appreciate that the testimony of the first witness was untrustworthy for the reason that there was the alleged discrepancy between her statement in the committal court and in the Court of Sessions. Thus, it is abundantly clear that the finding of the learned Sessions Judge about the mistake in recording the evidence of the first witness, by the committal court, has not been challenged at any stage in the court below.

The second ground of attack against the veracity of the first witness is that she had stated that Shanmugham Thevar—Prosecution Witness No. 3—had also seen the first appellant giving the deadly blows to her husband, and that the assailant continued giving his blows in spite of protests of P.W. 3. This argument proceeds upon the assumption that Prosecution Witness No. 3 is telling the truth and that, therefore, his evidence effectively contradicts that of the first witness. P.W. 3 was, as indicated above, cross-examined by the Public Prosecutor with reference to his previous statement before the Investigating Police Officer (P. W. 14). P. W. 14 has stated that before him P.W. 3 had stated just the contrary of what he stated in court. The statement of P.W. 3 at

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the earlier stage, before the Police, and later when examined in court, may or may not have been false, but certainly both cannot be true. Hence, it cannot be said that the evidence of P.W. 3 in court was the true version. That being so, his evidence in court is not strong enough to wipe out the evidence of the first witness on the ground that it is contrary to what P.W. 3 had stated. It is, thus, clear that none of the grounds urged in support of the contention that the evidence of the first witness is unreliable, has been made out. On the other hand, the first witness, being the most important witness from the point of view of the prosecution, was put to a severe test in her cross-examination. She has frankly made admissions in her cross-examination, which throw a very lurid light on the past life of her deceased husband. She admitted that he had been transported for life for having committed a murder and that after his release also, he had been sent to jail twice for having caused cut injuries to others. If the first witness were inclined to tell falsehoods or at least to conceal her husband's past, she could have taken shelter behind failing memory or want of information—not an uncommon characteristic of prevaricating witnesses. Her evidence, read as a whole, rings quite true, and we have no hesitation in acting upon it. It is true that her evidence in court has been sought to be contradicted by the evidence of P.Ws. 2 to 4, but the latter set of witnesses have been shown to be not reliable because they appear to have made different statements at different stages for reasons of their own. Their testimony does not inspire confidence and we cannot, therefore, brush aside the testimony of the first witness as compared to the evidence of P.Ws. 2 to 4. The testimony of the first witness is consistent with what she has stated in her first information report at the Police Station without any avoidable dealy, within less than an hour of the occurrence. It cannot, therefore, be said that her statement in court, is an afterthought, or the result of tutoring by other interested persons. Her story of the double attack, first on the front, and subsequently on the back and

side of the victim, is also consistent with the medical evidence as deposed to by the Medical Officer—P.W. 8. It is not necessary to set out in detail the dozen incised gaping wounds on the person of the deceased, which are all set out *in extenso* in the judgment of the learned Sessions Judge who has written a very careful and satisfactory judgment.

Alternatively, it has been argued on behalf of the appellants that it is not safe to convict the appellants on the testimony of a single witness even though she may not have been demonstrated to have been a lying witness. It has not even been claimed by counsel for the appellants that this is a rule of law. He has only put it on the ground of prudence that, ordinarily, the court should not, in a case involving a charge of murder, convict an accused person upon the testimony of a single witness. In this connection, our attention was drawn to the observations of their Lordships of the Judicial Committee of the Privy Council in the case of *Mohamed Sugal Esa Mamasan Ree Alalah* v. *The King* (1). In that case, their Lordships looked for corroboration of the testimony of a single witness in a murder case. It is true that in that case, the court had to look for and found corroboration of the testimony of the single witness in support of the murder charge, but the testimony of that witness suffered from two infirmities, namely :

(1) The witness was a girl of about 10 or 11 years at the time of occurrence.

(2) The girl witness had not been administered oath because the Court did not consider that she was able to understand the nature of the oath though she was competent to testify.

That was a case from Somaliland to which the provisions of the Indian Evidence Act (I of 1872) and of the Indian Oaths Act (X of 1873), had been made applicable. Special leave had been granted to appeal to His Majesty-in-Council on the ground that the local courts had admitted and acted upon the unsworn evidence of a girl of 10 or 11 years of age. Their Lordships upheld the conviction and sentence of death, holding that the

(1) A.I.R. (1946) P.C. 3.

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evidence, such as it was, was admissible. In the course of their Judgment, they made the following observations (at pp. 5-6) which are pertinent to the present controversy :

"It was also submitted on behalf of the appellant that assuming the unsworn evidence was admissible the Court could not act upon it unless it was corroborated. In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particular implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

The decision of this Court in the case of *Vemireddy Satyanarayan Reddy and three others* v. *The State of Hyderabad* (1) was also relied upon in support of the contention that in a murder case the court insists on corroboration of the testimony of a single witness. In the said reported decision of this Court P.W. 14 has been described as "a *dhobi* boy named Gopai". He was the only person who had witnessed the murder and his testimony had been assailed on the ground that he was an accomplice. Though this Court repelled the contention that he was an accomplice, it held that his position was analogous to that of an accomplice. This Court insisted on corroboration of the testimony of the single witness not on the ground that his was the only evidence on which the conviction could be based but on the ground that though he was not an accomplice, his evidence was analogous to that of an accomplice in the peculiar circumstances of that case as would be clear from the following observations at p. 252 :

(1) (1956) S.C.R. 247.

"....Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one whose position may, in this particular case, be said to be somewhat analogous to that of an accomplice, though not exactly the same."

It is not necessary specifically to notice the other decisions of the different High Courts in India in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweights 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 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.

(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.

In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is

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much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence—9th Edition, at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. 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 :

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

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 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. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver ; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the

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first witness, which is the only reliable evidence in support of the prosecution.

Lastly, it was urged that assuming that the court was inclined to act upon the testimony of the first witness and to record a conviction for murder as against the first appellant, the court should not impose the extreme penalty of law and in the state of the record as it is, the lesser punishment provided by law should be deemed to meet the ends of justice. We cannot accede to this line of argument. The first question which the court has to consider in a case like this, is whether the accused has been proved, to the satisfaction of the court, to have committed the crime. If the court is convinced about the truth of the prosecution story, conviction has to follow. The question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law. In other words, the nature of the proof has nothing to do with the character of the punishment. The nature of the proof can only bear upon the question of conviction—whether or not the accused has been proved to be guilty. If the court comes to the conclusion that the guilt has been brought home to the accused, and conviction follows, the process of proof is at an end. The question as to what punishment should be imposed is for the court to decide in all the circumstances of the case with particular reference to any extenuating circumstances. But the nature of proof as we have indicated, has nothing to do with the question of punishment. In this case, there are no such extenuating circumstances which can be legitimately urged in support of the view that the lesser penalty under s. 302 of the Indian Penal Code, should meet the ends of justice. It was a cold-blooded murder. The accused came for the second

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time, determined to see that their victim did not possibly escape the assassins' hands.

As regards the second appellant, we need not say anything more than that he was lucky enough to escape conviction under s. 302 of the Indian Penal Code, for the reasons given by the High Court, which may not bear close scrutiny. He amply deserves the punishment of 5 years' rigorous imprisonment under s. 326 of the Indian Penal Code.

For the reasons aforesaid, both the appeals fail and are dismissed.

Appeals dismissed.

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BALDEO SINGH AND OTHERS

v.

THE STATE OF BIHAR AND OTHERS

(S. R. DAS C. J., JAFER IMAM, S. K. DAS, GOVINDA MENON and A. K. SARKAR JJ.)

Gram Cutcherry—Criminal Jurisdiction—Concurrent jurisdiction of ordinary criminal Courts—Enactment, if discriminatory in character.—Bihar Panchayat Raj Act, 1947 (*Bihar Act 7 of* 1948), *ss. 60, 62, 68, 69, 70, 73—Constitution of India, Art. 14.*

The appellants were convicted of an offence under s. 379 of the Indian Penal Code by a full bench of the Gram Cutcherry constituted under the provisions of the Bihar Panchayat Raj Act, 1947. It was contended for the appellants that the conviction was bad on the grounds *inter alia,* that s. 62 of the Act which provided for the criminal jurisdiction of Gram Cutcherries gave concurrent jurisdiction to the ordinary criminal Courts and left it open to a party to go either to the ordinary criminal Courts or to a bench of the Gram Cutcherry, and as the procedure followed in the ordinary criminal Courts was substantially different from that followed by a Gram Cutcherry, the Act was discriminatory in nature and as such infringed Art. 14 of the Constitution.

Held, that the impugned provisions of the Act are not discriminatory in nature.

The scheme of the Act is that a case or suit cognizable under the Act by a Gram Cutcherry should be tried only by it unless the Sub-Divisional Magistrate or the Munsif concerned chooses to take action under s. 70 or s. 73 of the Act. The