

KUNJU @ BALACHANDRAN

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v.

STATE OF TAMIL NADU

(Crl. A. No. 112 of 2008)

JANUARY 16, 2008

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[DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.]

Evidence Act, 1872: s.134 – Testimony of sole witness – Evidentiary value of, for recording conviction – Held: Conviction can be based on testimony of single witness provided he is wholly reliable – It is not the quantity but quality that is relevant – Evidence has to be weighed and not counted – Test is whether evidence is cogent and trustworthy – On facts, conviction under s.302 IPC based on testimony of sole eyewitness upheld – Penal Code, 1860 – s.302, 341.

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The prosecution case was that the marriage of PW-5 was arranged with the accused. Two days prior to the date of occurrence, the deceased met PW-5 and offered flowers to her. PW-5 refused to receive the flower and told him that her marriage was fixed with the accused. This incident was informed to the accused. On the day of incident, the deceased along with his two friends, PW-1 and PW-2 went to take bath at canal, where accused came and assaulted deceased and gave various cuts on his body. Deceased fell down but accused continued to inflict injuries all over his body.

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PW-2 informed the brother of deceased about the incident who came to the spot and took deceased to the hospital. In the hospital, PW-7, Inspector recorded the statement of PW-1. The case was registered under ss.341 and 307 IPC. Later the deceased died and the case was converted into one under ss.341 and 302 IPC. Before the trial Court, PW-1, the author of the First Information Report resiled from his statement which was recorded during

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A investigation. Relying on the evidence of PW2, trial Court recorded the conviction under ss.302, 341 IPC. High Court affirmed the conviction.

B In appeal to this Court, appellant contended that the conviction was wrongly recorded on basis of the testimony of a sole eye-witness i.e. PW-2.

Dismissing the appeal, the Court

C HELD: 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. 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, D 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 s.134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. On E analysis of the factual scenario and on applying the principles of law, the appeal is without merit. [Para 9 and 11] [786-D-F, G]

F *Vadivelu Thevar v. State of Madras AIR 1957 SC 614; Jagdish Prasad v. State of M.P. AIR 1994 SC 1251; Sunil Kumar v. State Govt. of NCT of Delhi (2003) 11 SCC 367 – relied on.*

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 112 of 2008.

G From the final Judgment and Order dated 30.6.2005 of the High Court of Judicature at Madras in Criminal Appeal No. 28 of 2003.

Shashi Bhushan Kumar for the Appellant.

H V. Kanakaraj, S. Joseph Aristotle, S. Prabhu Ramasubramanian and V.G. Pragasam for the Respondent.

The Judgment of the Court was delivered by
DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo imprisonment for life and to pay a fine of Rs.200/- with default stipulation. The conviction was recorded and sentence imposed by learned Additional Sessions Judge Gobichettipalayam in Sessions Case No. 59 of 2002 dated 03.09.2002.

3. Factual background in a nutshell is as follows:

The accused Kunju @ Balachandran is the resident of Ceylon Refugee Camp at Bhavanisagar. Sudhakaran (hereinafter referred to as the 'deceased') also was residing in the same Refugee Camp. Prior to the date of occurrence, the parents of the accused arranged to get his marriage with Selvi (PW-5). Betrothal ceremony was also over. The deceased fell in love with Selvi (PW-5). Two days prior to the date of occurrence, the deceased met PW-5 and offered flower to her. PW-5 refused to receive the flower and told him that already her betrothal was held with the accused. This incident was informed to the accused.

On the date of occurrence i.e. on 28.2.2001, at about 6.50 p.m., the deceased along with two other friends, Stephen (PW-1) and Siva (PW-2) was proceeding to take bath at A.R.S. Canal. The accused came there and restrained the deceased by catching hold of his arm and dragged and assaulted him while abusing him in filthy language. He took out a Vettu Aruval (M.O.I.) from his hip and gave cuts on various parts of the body of the deceased. The deceased fell down, but the accused continued to inflict injuries all over the body. PWs 1 and 2, the other witnesses made a hue and cry. The people also gathered there. Therefore, the accused ran away from the scene place.

A On witnessing this incident, P.W.2 immediately went to the house of the deceased and informed P.W.3, the brother of the deceased. P.W.3 came to the scene and found that his brother was gasping for his life.

B Thereafter, PW-3 arranged for taking the injured to the Bhavanisagar Government Hospital, where first aid was given. Then, on receipt of the message from hospital, P.W.7 sub-Inspector of Police came to the hospital, recorded the statement (EX.P21) from PW-1. The case was registered for the offences punishable under Sections 341 and 307 IPC. Since the injured was in a serious condition, he was taken to Coimbatore Government Hospital by PW.3. On the way, the injured died. On receipt of the death information Ex.P26, the Inspector of Police P.W.18 took up investigation and altered the case into one under Sections 341 and 302 IPC.

D 4. After that investigation charge sheet was filed. Since the accused pleaded innocence, trial was conducted. Learned trial court considered the evidence on record and placing reliance on the evidence of PW2 recorded the conviction and imposed sentence as noted above. It is relevant to note that E PW 1 who was the author of the First Information Report (in short the 'FIR') resiled from his statement recorded during investigation. The trial court noted that though to certain extent F PW 1 departed from his statement during investigation, he accepted that three persons including the deceased and PW2 had gone to take bath but at that time the accused also came bare. Before the High Court, the stand taken before the trial court was reiterated. But the High Court did not find any substance and dismissed the appeal.

G 5. In support of the appeal learned counsel for the appellant submitted that the motive for the crime has not been established as the evidence of the girl does not show that she was being harassed by the deceased. Additionally, it is submitted that after PW 1 did not fully support the prosecution version and on the H testimony of a single witness i.e. PW 2, the conviction should

not have been recorded.

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6. Learned counsel for the respondent supported the impugned judgment.

7. As rightly noted by the trial court and the High Court even though PW 1 did not support the prosecution version in toto, yet his evidence lent corroboration to the evidence of PW2 that deceased, PW 2 and another had gone to take bath and at that time the accused came there. The evidence of PW 2 has not been shaken although he was cross examined at length.

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7. It is necessary to refer to the pivotal argument of the appellant's learned counsel that PW-2 is the sole eyewitness in the present case and no conviction should be based on the testimony of such an eyewitness who cannot be described as wholly reliable.

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8. In *Vadivelu Thevar v. 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 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: (AIR p. 619, paras 11-12)

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"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:

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(1) Wholly reliable.

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(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no

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A 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
B 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
C 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 the case of *Jagdish Prasad v. State of M.P. (AIR*
D *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
E 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,
F 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 above position was highlighted in *Sunil Kumar v.*
State Govt. of NCT of Delhi [(2003) 11 SCC 367].

G 11. On analysis of the factual scenario and on applying the
principles of law stated above, the inevitable conclusion is that
the appeal is without merit, deserves dismissal, which we direct.

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Appeal dismissed.

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