

N: Criminal Appeal No. 425 1974.

Appeal by Special Leave from the Judgment and order dated the 22nd July 1974 of the Madras High Court at Madras in Criminal Appeal No. 24 of 1974 and Referred Trial No. 3 of 1974.

A. N. Mulla, K. Jayaram and P. Chandrasekhar for the Appellant. , A. V. Rangam and Miss A. Subhasini for the Respondent.

The Judgment of the Court was delivered by GOSWAMI, J.

This appeal by special leave is directed against the 4 judgment and order of the, High Court of Madras convicting the appellant (hereinafter to be described as the accused) under section 302 IPC and sentencing him to death.

709 The police had submitted charge sheet under section 302/34 IPC against the present accused and accused Jabamani Nadar alias Kanyakumari Comrade alias Ramu and Thamizharasan alias Ramaswami, who was shown as an absconder.

On the prayer of the prosecution the case against the first two accused without the absconding accused, was taken up for trial.

The two accused were charged under section 120B read with sections 302 and 109 IPC as well as under section 302/34 IPC.

The case was referred to the High Court as usual and the accused also preferred appeals against their conviction and sentence.

The High Court acquitted accused Jabamani Nadar alias Kanyakumari Comrade alias Ramu and accepted the reference in respect of the present accused.

His appeal was also dismissed.

Hence this appeal by special leave.

The facts are in a brief compass.

The deceased, Viswanatham Pillai, was the village Munsif (Headman).

On April 26, 1971, at about 10.00 P.M. he was sleeping on a bench outside his cattle shed in the open space, which is shown in the site plan (exhibit P15) at No. 9.

The younger brother of the deceased, Pandurangam (PW 4), who is a leper, was also sleeping on the eastern parapet of the sluice of the north Boothagudi channel, which is shown at No. 5 in the site plan (exhibit P15).

Pandurangam woke up at about 11.15 P.M.

On hearing the shout of his deceased brother crying "younger brother: Karunakaran is running after stabbing me with knife. 'Catch him ' ".

He got up and saw the accused Karunakaran running on the eastern bank of the channel with a knife 8 inches long.

The electric lights were burning in the vicinity He also saw two persons running ahead of accused Karunakaran.

He further saw his two brothers, Gnanasakaran (PW 1) and Thiru gnanasambandam (PW 3) along with Ramasamy (PW 2) chasing them.

He ran to his elder brother who came from the side of the bench where he was sleeping and who fell down on the southern side of the sluice.

When he went near him he was already dead.

He had bleeding injuries on several parts of his body.

A crowd gathered and Pandurangam was asked to lodge information at the police station which he did.

The doctor (PW 16) who held the postmortem examination found nine injuries two of which he described as incised and four as punctured incised, two more as punctured and the remaining one as a vertical incised wound.

These were on the left upper arm, left fore arm, on the left side of the epigastrium, on the left side of the anterior axillary line, on the left mid axillary line, on the right side of the epigastrium and on the left side of the back.

Injuries are very severe and according to the doctor death was due to shock and hemorrhage on account of the injuries.

It is clear that whosoever had inflicted these injuries definitely had the intention to cause the death of the victim.

In the first information report which PW 4 lodged at the Thana, which is very close to the place of occurrence, within about 15 minutes of the occurrence, inter alia, stated thus: 4 L159SCI/76 710 At about 11.15.

P.M. I woke up on hearing a noise to the effect 'younger brother, Karunakaran is running after stabbing me with knife, 'catch him '.

I stood up and saw Karunakaran, son of Orathur Ayyathurai Padayachi running eastwards from the place where I lay and my elder brother chasing him from behind.

I too came running".

It will be seen that at the time of lodging of the first information report only the present accused was implicated.

Even so, later on four eye witnesses were produced implicating not only the present accused but also two other accused.

The High Court after appreciating the entire evidence rejected the evidence of these eye witnesses, namely, PW 1, 2, 3 and 5 and described them as "a bunch of liars", "unashamed liars and perjurers".

The High Court, therefore, acquitted the second accused, Jabamani Nadar alias Kanyakumari Comrade alias Ramu and also observed that necessarily no case would lie on this kind of testimony against even the absconding accused.

It was also observed that the High Court "can place no reliance on the testimony of PW 4 in so far as he implicated the second accused and Tharnizharasan in the case of murder of Viswanatham".

The High Court further observed: "Poor PW 4 was compelled to speak to a version which ought to accord and harmonise with the version given out by , PWs 1, 2 and 3".

Even so the High Court thought that it was justified in convicting the present accused on the sole testimony of PW 4 "corroborated by the contents of exhibit P1 (FIR)".

The High Court held that "PW 4 who was afflicted with the fell disease of leprosy. has absolutely no motive to implicate the first accused".

The High Court further held that PW 4 gave a "candid, natural and truthful version. at the earliest opportunity".

The High Court has taken note of the fact that "there has been a history of a bitter feud spanning over nearly a decade between the first accused and his father on the one hand and the deceased Viswanatham t on the other".

This is, therefore, a case where conviction of the accused depends . on the sole testimony of a single witness.

If the witness is absolutely reliable there can be no infirmity in convicting the accused.

In that ' case even corroboration may not be sought for.

ordinarily in an appeal under article 136 of the Constitution we would have hesitated to go into the facts to reappreciate the evidence.

It is, however, not possible to adopt that course in this case where the testimony of the sole witness has been rejected with reference to the 1 second accused who was on the same boat with the appellant.

The very fact that this eye witness could be persuaded to substitute PWs 1, 2 and 3 for his deceased brother as chasing the assailants, degrades him from the status of an absolutely reliable witness.

He is definitely an obliging witness and cannot at all be trustworthy.

This witness may not have a qualm of conscience in implicating the accused for the 711 mere asking by someone, if not by the inimical police officer (PW 23) against whom criminal cases were pending at the instance of the accused's father.

Apart from that we find that the High Court has not considered the intrinsic quality of the evidence of PW 4.

It failed to notice certain broad facts which should definitely weigh with the court while appreciating ocular testimony.

From the medical evidence it is clear that there were more than one assailant and yet for the FIR it appears that there was only one assailant.

This may not, in a given case, be considered as a very serious infirmity since the witness may not have seen the other.

assailants when he came running to the place of occurrence.

But the fact that the witness has stated in the first information report that the deceased was only mentioning the name of accused Karunakaran as his assailant, this earlier version appears to be contradicted by the medical evidence.

Besides, he has deliberately changed his own stand in court when he deposed that he saw two other persons running ahead of Karunakaran being chased by his two brothers and Ramaswamy.

Another very serious departure from his earlier version is that while PW 4 had stated in the first information report that "my elder brother" (meaning the deceased) was "chasing him from behind" in court he has completely given a go by to this statement and stated that Karunakaran was being chased by PWs 1, 2, and 3.

He did not at all refer to the deceased chasing him.

If his statement in court that he saw PWs 1, 2 and 3 chasing Karunakaran while running away after the assault is true, it is difficult to appreciate that he would not mention about this fact in the first information report.

He admitted in the course of cross examination that the Sub Inspector asked him whether he had any witnesses and that he "did not tell about them due to excitement".

It is difficult to accept this explanation of this witness.

Assuming that his earlier version in the first information report is true that the deceased chased the accused .

as the latter was running away after the assault we would have expected some evidence of a trail of blood stains from the place where he was sleeping to the place where he fell dead.

On the other hand we find that there is a mention about a pool of blood only where the dead body was found at No. 1 in the site plan.

There were also no blood stains on the bench where he was said to be sleeping.

We further find from the evidence of PW 4 in cross examination that when he went near his deceased elder brother about hundred persons were there and "none of them asked him as to how it had happened".

We do not find in this case a single witness out of that crowd produced in court for the purpose of corroborating PW 4.

If the statement of PW 4 is to be believed, the crowd had gathered at the place of occurrence already when he arrived.

It is also conceivable that those persons, who arrived at the place of occurrence a little earlier than PW 4, did not see the assailants who might have already escaped.

It also stands to reason that those persons who gathered would not ask PW 4, who arrived at the place a little later, for information with regard to the assailants.

There is considerable doubt as to this testimony with regard to seeing the accused running away from the place of occurrence.

When the accused is going to lose his life in such a serious charge it is only necessary that the court should be circumspect and closely scrutinise the evidence to come to an unhesitating conclusion that he is absolutely reliable.

We are unable to say that the High Court in this case has made a correct approach in assessing the quality of the testimony of this solitary eye witness.

The High Court is not even right that PW 4 stands wholly corroborated by the contents of the FIR.

On the other hand we have .

It is shown that his version in the FIR stands contradicted by the testimony in court on a very material point.

For the reasons given above we are unable to place such reliance as is requisite on the testimony of this uncorroborated solitary witness for convicting the accused facing a murder charge.

The conviction and sentence of death are, therefore, set aside.

The appeal is allowed and the accused shall be released from detention forthwith.

S.R. Appeal allowed.