Sunil Kumar vs State Govt. Of Nct Of Delhi on 15 October, 2003

Equivalent citations: AIR 2004 SUPREME COURT 552, 2003 (11) SCC 367, 2003 AIR SCW 6026, 2004 SCC(CRI) 1055, 2004 ALL MR(CRI) 244, 2003 (8) SCALE 633, 2003 (6) SLT 512, (2003) 12 ALLINDCAS 879 (SC), 2003 (12) ALLINDCAS 879, (2003) 47 ALLCRIC 919, (2003) 4 CRIMES 279, (2004) 27 OCR 158, (2003) 3 CHANDCRIC 188, (2003) 4 RECCRIR 713, (2003) 4 CURCRIR 239, (2003) 7 SUPREME 519, (2004) 1 ALLCRIR 478, (2003) 8 SCALE 633, (2004) 13 INDLD 642, (2004) 48 ALLCRIC 27, (2003) 4 ALLCRILR 872, (2003) 4 CRIMES 383, (2003) 3 ALLCRIR 2739

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  263 of 2003

PETITIONER:
SUNIL KUMAR

RESPONDENT:
STATE GOVT. OF NCT OF DELHI

DATE OF JUDGMENT: 15/10/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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JUDGMENT 2003 Supp(4) SCR 767 (With Crl.A. No. 266 of 2003) The Judgment was delivered by ARIJIT PASAYAT, J.

These two appeals are directed against a Division Bench judgment of the Dehi High Court which dismissed the appeal filed by the appellants jointly. Appellants-Dharamvir and Sunil Kumar were held guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Accused-appellant Dharamvir was further found guilty of offence punishable under Section 27 of the Arms Act, 1959 (in short 'the Arms Act'). Each was sentenced to imprisonment of life and a fine of Rs. 2000/- with default stipulation. Dharamvir was separately sentenced to undergo RI for three years for the offence punishable under Section 27 of the Arms Act and a fine of Rs. 1000/- with default stipulation.

2. Prosecution version delineated in its essentials is as follows:

Jai Kishan (hereinafter referred to as 'the deceased') was the brother of Rajesh (PW5). They were living at Sultanpuri. Deceased used to sell eggs in a kokha and was on visiting terms with an eunuch named Mumtaz, who lived in E-Block Sultanpuri. The father of Rajesh had advised deceased to severe his relationship with Mumtaz and he had stopped going to Mumtaz. This had annoyed Mumtaz. Accused-appellant Dharamvir was also visiting Mumtaz, who had instigated Dharamvir against the deceased. On 22.5.1996 at about 7.00 p.m. Dharamvir had come to the house of Rajesh and told deceased in a threatening tone as to why he was not visiting Mumtaz. He wanted to take deceased along with him but at the advise of Rajesh he did not accompany him.

3. On 23.5.1996 when Rajesh (PW5) got up in the morning he found that his brother Jai Kishan was not present in his room and his room was locked. He was suspicious and started searching for his brother. He went to the house of Mumtaz. It was about 7.00 a.m. when he found his brother there. Both the accused-appellants Dharamvir and Sunil were also there. They were engaged in some arguments. He told his deceased brother to come back home. Mumtaz told Rajesh that his brother would be sent back soon. Rajesh (PW5) started coming back towards his home. When he reached the park of 'A' Block he heard the voice of his brother and saw his brother running from the house of Mumtaz. Accused-appellants Dharamvir and Sunil were chasing him. Dharamvir had an open knife in his hand. When deceased reached near 'A' Block, appellant-Sunil caught hold of him and appellant-Dharamvir gave him knife blows. Rajesh had raised the alarm 'Bachao-Bachao" (save-save). In the meantime Vinod, son of Piary Lal (PW3) and some other persons reached there. Accused-appellants Sunil and Dharamvir ran away. Rajesh along with Vinod took his brother to the hospital where his brother was declared to have been brought dead. In his complaining statement he pointed that Mumtaz, Dharamvir and Sunil in furtherance of their common intention had attacked his brother-deceased. On the basis of said complaining statement, first information report was lodged and investigation was undertaken. After completion of investigation charge sheet was placed and the accused persons were tried.

4. To further the prosecution version 17 witnesses were examined. Two witnesses, namely, Vinod and Rajesh (PWs 3 and 5 respectively) were stated to be eyewitnesses. However, Vinod made a departure from the statements purported to have been given during investigation when he deposed in Court. But Rajesh reiterated the statements while tendering evidence. Accused persons claimed false implication. It is to be noted that another person, namely, Parveen @ Monty was arrayed as an accused. Placing reliance on the evidence of Rajesh (PW5) the Trial Court found the present appellants guilty while it was held that evidence were not sufficient to fasten guilt on Parveen. The High Court dismissed the appeals filed by the convicted accused persons by the impugned judgment.

5. In support of the appeals learned counsel for the appellants submitted that this being a case where ultimate result depends upon the acceptability of a single witness, namely, Rajesh (PW5), it was imperative that his evidence should be taintless. It should be totally reliable. On the contrary a lot of improvements have been made. As prosecution version goes to show, there was no heated exchange when Rajesh (PW5) left the house of Mumtaz. The situation cannot become so

uncontrollable that it would result in deceased being chased by the two accused persons. This is highly improbable. Further, the evidence of PW5 does not inspire confidence. If there was no enmity between the accused and the deceased, there is no motive to spur two persons to take the life of another. The antecedent motive was not even stated when statements were being recorded during investigation. The improvement has been sought to be made to introduce the element of enmity. In any event, the injury stated to have been inflicted was not intended to be fatal and, therefore, case under Section 302 IPC has not been made out. The improvement made by the witness is not trivial and, in fact, a person whose name was not in the first information report was subsequently introduced. The Trial Court did not find the material against him to be reliable and same was the situation vis-a-vis other accused persons also.

6. Per contra, learned counsel for the respondent-State submitted that the Trial Court as well as the High Court have analysed the evidence in detail and have found the accused persons guilty and no exception can be taken to the conclusions to warrant any interference.

7. It is necessary to refer to the pivotal argument of the appellants' learned counsel that Rajesh (PW5) is the sole eye witness in the present case and no conviction should be based on the testimony of such an eyewitness who cannot be described as wholly reliable.

8. In Vadivelu Thevar vs. The State of Madras 1957 AIR(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 first to categories this Court said that they pose little difficulty but in the case of third category of witness corroboration would be required. The relevant portion is quoted as under:

> "...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 unrealiable.

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..."

9. Vadivelu Thevar's case (supra) was referred to with approval in the case of Jagdish Prasad and others vs. State of M.P. 1994 AIR(SC) 1251). This Court held that as a general rule to 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 for 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. Evidence of PW5 has been analysed with great care and caution by the Trial Court as well as the High Court. The so-called improvements do not, in any way, introduce a new facet of the case. Every omission is not a contradiction. Minor details which are not indicated in the first information report are later on elaborated in court do not justify a criticism that the case originally presented has been abandoned to be substituted by another one. PW's 5 evidence appears to be clear, cogent and trustworthy. Nothing substantial has been brought on record to disregard the testimony of this witness. Though PW3 changed his version, yet his evidence does not get totally wiped out. A part of it which is reliable can be taken note of by the court and has, in fact, been taken note of. The evidence of this witness notwithstanding his making a different version provides some corroboration, though as noted above, the evidence of PW5 alone was sufficient to fix the guilt of the accused persons. Merely because of the fact that there were some minor omissions, which are but natural, considering the fact that the examination in court took place years after the occurrence the evidence does not become suspect. Necessarily there cannot be exact and precise reproduction in any mathematical manner. What needs to be seen is whether the version presented in the court was substantially similar to what was stated during investigation. It is only when exaggerations fundamentally change the nature of the case, the court has to consider whether the witness was telling the truth or not. As has been held by the Trial Court as well as the High Court, the evidence of PW5 was truthful evidence. He has graphically described the assaults on the deceased. Accused-Dharamvir gave several blows on the person of decease while accused- Sunil caught told of him to facilitate the assailants. Section 34 of the Act is clearly attracted. This is not a case where anything substantial has been brought on record to disregard the evidence of PW5.

11. That being the position the conviction and sentence imposed do not warrant any variation or interference.

Appeals are without merit and are dismissed.