

## **Kunju @ Balachandran vs State Of Tamil Nadu on 16 January, 2008**

**Equivalent citations:** AIR 2008 SUPREME COURT 1381, 2008 (2) SCC 151, 2008 AIR SCW 835, 2008 (2) AIR JHAR R 370, (2008) 63 ALLINDCAS 86 (SC), 2008 (63) ALLINDCAS 86, 2008 (1) SCC(CRI) 331, 2008 (1) SCALE 479, 2008 (1) CALCRILR 823, 2008 (2) CRI RJ 271, 2008 ALL MR(CRI) 1175, 2008 (2) SRJ 305, 2008 CALCRILR 1 823, 2008 CHANDLR(CIV&CRI) 167, (2008) 1 ANDHLD 896, (2008) 105 CUT LT 513, (2008) 1 MADLW(CRI) 423, (2008) 39 OCR 573, (2008) 1 RECCRIR 732, (2008) 1 CURCRIR 224, (2008) 1 SCALE 479, (2008) 60 ALLCRIC 1019, (2008) 1 CHANDCRIC 184, (2008) 2 ALLCRILR 19, 2008 (1) ALD(CRL) 896

**Author:** Arijit Pasayat

**Bench:** Arijit Pasayat, Aftab Alam

CASE NO. :

Appeal (crL.) 112 of 2008

PETITIONER:

Kunju @ Balachandran

RESPONDENT:

State of Tamil Nadu

DATE OF JUDGMENT: 16/01/2008

BENCH:

Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:

**J U D G M E N T** (Arising out of S.L.P. (CrL.) No.3221 of 2006) 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.

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.

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.

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 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 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.

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 testimony of a single witness i.e. PW 2, the conviction should not have been recorded.

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.

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.

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)

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.

9. *Vadivelu Thevar* case (supra) was referred to with approval in the case of *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 above position was highlighted in Sunil Kumar v. State Govt. of NCT of Delhi [(2003) 11 SCC 367].

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.