

**George
v.
The State of Tamil Nadu and Others**

(Criminal Appeal No. 5279 of 2024)

13 December 2024

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether the Division Bench of the High Court erred in convicting the appellant-original accused no.1, when on the basis of the very same evidence of PW-1, a benefit of doubt was granted to accused Nos.2 and 3.

Headnotes[†]

Penal Code, 1860 – ss.294(b), 341, 506(ii) and 302 – Prosecution case that the informant's son was caught by the two accused persons when he was trying to escape their attack, the appellant hacked the knife forcibly on the left side of his neck – The informant's son was taken to the hospital, where he was declared dead – Hence, the FIR by PW-1 – The trial court came to the conclusion that the prosecution has proved the case beyond reasonable doubt and proceeded to convict and sentence the accused persons – The High Court acquitted the two other accused persons, however, appellant was acquitted u/s.506(ii) IPC and his conviction u/ss.294(b), 341, and 302 IPC was sustained – Correctness:

Held: While disbelieving the testimony of PW-1 *qua* accused Nos. 2 and 3, the High Court has taken note of the fact that the incident occurred 300 metres away from the Church and that could not have enabled PW-1 to have actually witnessed the overt act that is attributed to accused Nos.2 and 3 – However, the appellant herein involved in the same overt act has been convicted on the basis of the same testimony of PW-1 – In the instant case, PW-1 is the father of the deceased and is an interested witness – No doubt that merely because a witness is an interested witness, it cannot

* Author

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be a ground to discard the testimony of such a witness – However, the testimony of such a witness has to be scrutinized with greater caution and circumspection – When the High Court comes to a conclusion that it is difficult to believe that PW-1 could have witnessed the incident in the manner narrated by him and granted benefit of doubt to accused Nos.2 and 3, the conviction of accused No.1 on the basis of the evidence of the very same witness only on the basis of conjectures and surmises, is not permissible – As far as seizure of knife is concerned, the testimony of PW-18 would show that the recovery was made from an open place accessible to one and all – In the considered opinion of this Court, only on the basis of the circumstance of such a recovery, the conviction could not have been based – Therefore, the appellant is acquitted of all the charges levelled against him and is directed to be released forthwith. [Paras 12, 13, 14, 15, 17(iii)]

List of Acts

Penal Code, 1860.

List of Keywords

Murder; Acquital of accused and conviction of other accused on basis of same witness; Benefit of doubt; Interested witness; Basis of conjectures and surmises; Falsus in uno, falsus in omnibus; Sole testimony.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5279 of 2024

From the Judgment and Order dated 01.11.2019 of the High Court of Judicature at Madras at Madurai in CRLAMD No. 479 of 2017

Appearances for Parties

S. Nagamuthu, Sr. Adv., Ms. D Durga Devi, Pranab Prakash, Advs. for the Appellant.

N.R.Elango, Sr. Adv., Sabarish Subramanian, Vishnu Unnikrishnan, C. Kranthi Kumar, Danish Saifi, V.M. Eshwar, Ms. Aswani Satheesh, Advs. for the Respondents.

George v. The State of Tamil Nadu and Others**Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. Leave granted.
2. The present appeal challenges the final judgment and order dated 1st November 2019 passed by the Madurai Bench of Madras High Court in Crl. A. (MD) No. 479 of 2017, whereby the Criminal Appeal filed by the appellant against the judgment and order dated 17th November 2017 in Sessions Case No. 83 of 2016 on the file of the I Additional District and Sessions Judge, Thoothukudi (hereinafter, "trial court") was *partly allowed*. The Division Bench of the High Court upheld the conviction and sentence qua the appellant insofar as the offence punishable under Sections 294(b), 341 and 302 of the Indian Penal Code, 1860 (hereinafter, "IPC") but he was acquitted of the charge under Section 506(ii) IPC.
3. The facts necessary for the adjudication of the present appeal are as given below:
 - 3.1 The genesis of the present case is the registration of FIR No. 224 of 2015 on 16th May 2015 at Police Station Sathankulam, District Thoothukudi by one Mr. Kovilraj (PW-1). Written information was received at the said Police Station at 02:30 hours alleging commission of offence punishable under Sections 294(b), 342, 302 and 506(ii) IPC by the appellant, Rajarathinam and Albert. It is stated by PW-1 that he is a Church Member and Choir Master in Immanuel Church at Ananthapuram. He stated that he was in favour of Arputharaj in the Diocese Election, due to which the appellant, who supported the rival faction of Pushparaj entered into a wordy quarrel with his son (Praveen Kumar) about a year prior to the day of the incident. It is stated that the informant (PW-1), his wife Chandra and his son had gone to Ananthapuram for a Consecration Festival on 15th May 2015. In the intervening night of 15-16th May 2015, at around 00:30 hours, when the informant's son was standing in front of the Church and chatting with his friends Praveen Immanuel (PW-2), Melvin Abraham (not examined) and Jerome

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(not examined), the three accused persons came and abused the informant's son in a filthy language and questioned him as to how after working against them in the election, he could come and participate in the festival. It is stated that informant's son had replied that they had no right to question him. Immediately thereafter, the appellant took out a *knife*, which he had hid in his hip (pocket), upon which, the informant's son ran owing to escape. The informant's son was chased by the three of them, however, he was caught by the accused persons. It is alleged that while the other two accused persons held the informant's son, the appellant hacked the knife forcibly on the left side of his neck. The informant's son was taken to the hospital, where he was declared dead. Hence, the FIR by PW-1.

- 3.2 Upon registration of the FIR, the investigation was taken over by Vijaya Kumar (Inspector of Police) (PW-19). PW-19 went to the scene of crime, he prepared the observation mahazar (Ex. P-18) and a rough sketch (Ex. P-19) and also recovered the material objects (M.O.-12 and M.O.-13) in the presence of witnesses. He, thereafter, proceeded to the hospital and prepared the inquest report (Ex. P-21). Based on the confession of the appellant, the *knife* (M.O.-1) was recovered by Nagarajan, Inspector of Police (PW-18), who had taken over part of the investigation in the absence of PW-19 for a short period. The statements of all the witnesses were recorded by PW-19 and after completion of investigation, on 17th August 2015, the final report was filed before Judicial Magistrate, Sathankulam.
- 3.3 Since the case was exclusively triable by the Sessions Court, it was committed to the trial court. The trial court framed charges against the accused persons. To bring home the guilt of accused persons, the prosecution examined 19 witnesses, marked 23 documents and 13 material objects. No witness was examined and no document was marked on the side of the defence. The trial court, upon consideration of the facts and circumstances of the case and after analyzing the oral and documentary evidence, by judgment and order dated 17th November 2017 came to the conclusion that the prosecution has proved the case beyond reasonable doubt and proceeded to convict and sentence the accused persons. Insofar as the appellant is concerned, the trial court held that he is guilty of

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offences punishable under Sections 294(b), 341, 302 and 506(2) of the IPC and sentenced him to undergo simple imprisonment for three months for the offence under Section 294(b) IPC, to undergo simple imprisonment for one month for the offence under Section 341 IPC and to undergo life imprisonment and to pay fine of Rs.50,000/- in default to undergo two years simple imprisonment for the offence under Section 302 IPC and to undergo simple imprisonment for two years for the offence under Section 506(ii) IPC.

- 3.4 Aggrieved thereby, the accused persons, including the appellant, filed an appeal before the High Court. Vide impugned judgment and order, the High Court, *partly allowed* the appeal qua the appellant. While sustaining the conviction and sentence for the offence under Sections 294(b), 341, and 302 IPC, the High Court acquitted the appellant for the charge under Section 506(ii) IPC. Aggrieved thereby, the appellant filed the present appeal by way of special leave.
4. We have heard Shri S. Nagamuthu, learned Senior Counsel appearing on behalf of the appellant and Shri N.R. Elango, learned Senior Counsel appearing on behalf of the State of Tamil Nadu.
5. Shri Nagamuthu, learned Senior Counsel appearing on behalf of the appellant submitted that the learned Judges of the Division Bench of the High Court have grossly erred in convicting the appellant – original accused No.1. He submitted that, on the basis of the very same evidence of Kovilraj (PW-1), the learned Judges of the High Court have disbelieved the testimony of Kovilraj (PW-1) insofar as accused Nos.2 and 3 are concerned. However, on the basis of the same evidence, the appellant has been convicted. It is therefore submitted that, on this short ground alone, the appeal deserves to be allowed.
6. Shri Elango, learned Senior Counsel appearing on behalf of the State has opposed the appeal submitting that in view of the concurrent findings of fact, no interference is warranted in the present appeal.
7. With the assistance of the parties, we have examined the material placed on record.
8. As submitted by Shri Nagamuthu, learned Senior Counsel appearing on behalf of the appellant, the conviction is based solely on the testimony of Kovilraj (PW-1). Kovilraj (PW-1), in his evidence,

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stated that a year prior to the occurrence during Immanuel Church Consecration, accused No.1 i.e., the appellant herein had beaten up his son (deceased). He stated that the issue was settled in his village by compromise, thereafter, there was no issue. It is stated that on 15th May 2015 at 05:00 o'clock in the evening, he along with his wife Chandra and his son (Praveen Kumar) went to Aananthapuram from Nazareth. He stated that about 500 persons had participated in the Consecration Prayer which began at about 06:30 in the evening and lasted up to 09:00 o'clock in the night. Thereafter, in the Church, there was a united feast in which he and his family participated too. He further submitted that, in order to participate in the early morning 03:00 o'clock prayer, they all stayed in the Church. He stated that, in the midnight at 12:30 o'clock, his son (deceased) went out. He saw his son (deceased) standing and talking with his friends, namely Melvin Abraham, Praveen Immanuel and Gerome. At that time, the accused persons hurled abuses at his son (deceased). He stated that the appellant herein threatened his son (deceased) with a knife and tried to attack the deceased. However, his son (deceased) escaped and ran directly to the main road. He stated that the accused persons also ran after his son (deceased). He also stated that he along with his wife and friends of his son (deceased) also ran behind them. He stated that accused Nos.2 and 3 held his son (deceased) by his hands whereas the appellant herein assaulted him with the knife. His son (deceased) fell down on the ground. Thereafter, his son (deceased) was taken to the hospital where he was declared dead.

9. The High Court has found the evidence of Kovilraj (PW-1) unreliable insofar as accused Nos.2 and 3 are concerned and therefore did not find it safe to convict them and granted them benefit of doubt. The High Court has observed that the evidence of Kovilraj (PW-1) insofar as accused Nos.2 and 3 are concerned appears to be unnatural. The High Court has also observed that, since the incident had taken place at around 300 metres away from the Church, it is difficult to believe that Kovilraj (PW-1) could have actually witnessed the overt act attributed to accused Nos.2 and 3. However, strangely, the High Court, on the basis of very same evidence of Kovilraj (PW-1), has believed it qua the appellant herein and confirmed his conviction.
10. In paragraph 21 of the impugned judgment, the learned Judges of the High Court have observed that in the course of natural events, except the appellant herein (accused No.1), no one else could have

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caused the injury to the deceased. In our considered view, the said finding is based purely on conjectures and surmises.

11. No doubt that a conviction could be based on the sole testimony of a witness. Equally the principle that *falsus in uno, falsus in omnibus* is not applicable in Indian criminal jurisprudence. However, in the present case, on the basis of sole testimony of the same witness (PW-1), the appellant herein has been convicted and the other two accused, involved in the same incident have been acquitted by giving them benefit of doubt.
12. Further, in paragraph 23, while disbelieving the testimony of PW-1 qua accused Nos. 2 and 3, the High Court has taken note of the fact that the incident occurred 300 metres away from the Church and that could not have enabled PW-1 to have actually witnessed the overt act that is attributed to accused Nos. 2 and 3. However, the appellant herein involved in the same overt act has been convicted on the basis of the same testimony of PW-1.
13. It is further to be noted that, in the present case, Kovilraj (PW-1) is the father of the deceased and is an interested witness. No doubt that merely because a witness is an interested witness, it cannot be a ground to discard the testimony of such a witness. However, the testimony of such a witness has to be scrutinized with greater caution and circumspection.
14. In the present case, when the High Court comes to a conclusion that it is difficult to believe that Kovilraj (PW-1) could have witnessed the incident in the manner narrated by him and granted benefit of doubt to accused Nos. 2 and 3, the conviction of accused No. 1 on the basis of the evidence of the very same witness only on the basis of conjectures and surmises, in our view, is not permissible.
15. Insofar as the other circumstance with regard to seizure of knife as could be found from the evidence of Inspector of Police, the testimony of PW-18 would show that the recovery was made from an open place accessible to one and all. As such, we are of the considered opinion that only on the basis of the circumstance of such a recovery, the conviction could not have been based.
16. We are, therefore, of the considered view that the High Court has grossly erred in convicting the appellant while giving benefit of doubt to accused Nos. 2 and 3.

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17. In the result, we pass the following order:
 - (i) The appeal is allowed;
 - (ii) The impugned judgment and order dated 1st November 2019 passed by the High Court is quashed and set aside; and
 - (iii) The appellant is acquitted of all the charges levelled against him and is directed to be released forthwith if not required in any other case.
18. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan