



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.311 of 2015

Aravinthan ... Appellant/Sole Accused
Vs.

State Represented by
The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam,
Thanjavur District. .. Respondent/Complainant
(Crime No.170 of 2007)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records in S.C.No.88 of 2008, on the file of the I Additional District and Sessions Judge (Protection of Civil Rights), Thanjavur, Thanjavur District and set aside the Judgment dated 09.05.2008 and acquit the appellant of the charges leveled against him.

For Appellant : Mr.A.Thiruvadi Kumar
For Respondent : Mr.C.Mayilvahana Rajandran
Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellant is the sole accused in S.C.No.88 of 2008 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur. The trial Court framed charges under Sections 302 of I.P.C (2 counts) against this Appellant/Accused.

2.The trial Court by Judgment dated 09.05.2008 convicted and sentenced the appellant to undergo Life Imprisonment for each counts under Section 302 of I.P.C and to pay a fine of Rs.1,000/- in each count. In default to undergo Rigorous Imprisonment for 3 years in each counts. All the sentences shall run concurrently.

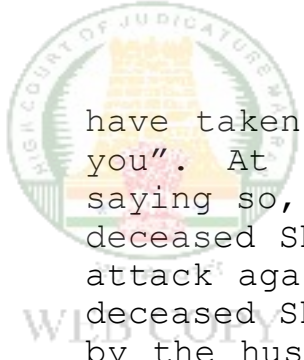


The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against her, the present appeal has been filed by the appellant/accused.

3. The case of the prosecution is that the accused Aravindhan and the deceased Ganesan and Shankar were friends and all of them belonged to Kumbakonam. Ten days prior to the date of occurrence i.e., on 20.03.2007 the deceased Shankar has forcibly taken Rs.300/- from the accused. Therefore the accused had developed the enmity against the deceased Shankar. When the fact are so, on 20.03.2007 at about 6.30 p.m. near Kumbakonam Mariyamman Temple Street, in front of the house of Ganesan, while the deceased Ganesan and Shankar were talking, the accused came there and questioned Shankar that "You have taken Rs.300/- from me. I will not leave you without killing you". At that time, PW-1 Manjula was present. The accused by saying so, taken knife from his waist and caused knife blow on the deceased Shankar and when Shankar shouted at the accused about the attack again the accused caused another injury on the hand of the deceased Shankar. When the said act of the accused was questioned by the husband of the PW-1, the accused also caused knife blow on the chest of PW-1's husband Ganesan. Immediately PW-1 shouted, PW-2 and PW-3 who were standing in the edge of the street came to the spot and tried to prevent the accused. However, the accused escaped from the scene of the occurrence. Thereafter PW-2 & PW-3 along with PW-1 had taken the deceased body to the hospital in Auto. At the hospital, the doctor has declared both the deceased died. Immediately thereafter PW-1 Manjula went to the police station and gave Statement Ex-P1. On the basis of the complaint of the PW-1, the PW-11 has registered a case against the accused in Cr.No.170 of 2007 under Section 302 of IPC.

4. After filing charge sheet before the Learned Judicial Magistrate, Kumbakonam in P.R.C.No.45 of 2007, the case was committed to the I Additional District & Sessions Judge (PCR), Thanjavur and came to be numbered as S.C.No.88 of 2008. In this case, 13 witnesses were examined as prosecution side witnesses and 16 Exhibits were marked on the side of prosecution and there are 10 material objects produced before the Trial court. There was one witness examined and 3 exhibits marked on the side of the accused.

5. In this case, PW-1 Manjula who is the wife of one of the deceased Ganesan deposed that her husband Ganesan and Shankar are friends. On 20.03.2007 at about 12 Noon her husband Ganesan and his friend Shankar have gone for fishing work with one Prakasam. Thereafter the said Prakasam dropped them to the house of Ganesan at 6.30 p.m. When her husband Ganesan and Shankar were talking, the accused Aravindan came there and questioned Shankar that "You



have taken Rs.300/- from me. I will not leave you without killing you". At that time, PW-1 Manjula was present. The accused by saying so, taken knife from his waist and caused knife blow on the deceased Shankar and when Shankar shouted at the accused about the attack again the accused caused another injury on the hand of the deceased Shankar. When the said act of the accused was questioned by the husband of the PW-1, the accused also caused knife blow on the chest of PW-1's husband Ganesan. Immediately PW-1 shouted, PW-2 and PW-3 who were standing in the edge of the street came to the spot and tried to prevent the accused. However, the accused escaped from the scene of the occurrence. Thereafter PW-2 and PW-3 along with PW-1 had taken the deceased body to the hospital in PW-6 Shankar's Auto. At the hospital, the PW-9, doctor has declared both the deceased died. Immediately thereafter PW-1 Manjula went to the police station and gave Statement Ex-P1. Further PW-1 deposed that the knife M.O.1 shown to her was used to stab her husband and his friend Shankar.

6.The PW-2 Gunasekaran deposed that the deceased Ganesan is his younger brother and PW-1 is the wife of his brother deceased Ganesan. The PW-3 Selvam is his brother. On 20.03.2007 while he and his brother PW-3 were standing and talking with others near the house of the deceased Ganesan, PW-1 Manjula shouted that her husband and his friend Shankar were stabbed by the accused. Immediately thereafter they rushed to the place of occurrence and tried to overpower the accused. But the accused ran away from the place of occurrence. Thereafter they stopped the auto belonged to PW-6 and taken the deceased Ganesan and Shankar to the hospital where they declared dead by PW-9 Doctor P.Karthikeyan. The PW-3 who is the another brother of the deceased Ganesan also deposed the same version as that of PW-2.

7.The PW-4 Minor Vinoth deposed that the deceased Ganesan is his father and deceased Shankar is the friend of his father. He stated that the accused Aravind uncle had caused injury on his father and Shankar and therefore both of them have died due to the injury.

8.The PW-6 S.Shankar deposed that he is an auto driver. On 20.03.2007 at about 6.30 p.m., while he was returning from Natchiyarkovil to Kumbakonam, his auto was stopped by two persons with a request to admit two injured into the hospital. Therefore PW-6 auto driver dropped the deceased in the hospital and he came to know that both the deceased were died. The PW-7 Prakasam deposed that on 20.03.2007 at 12.30 p.m. he took both the deceased Ganesan and Shankar to fishing work and thereafter he dropped them at 6.30 p.m. in Ganesan's house.



9.The PW-8 deposed that he is working as VAO at Kumbakonam on 21.03.2007 he was called by the police and therefore he went to the police station. In the police station, the Inspector has examined the accused and recorded his voluntary confession statement. The admitted portion of the confession statement is Ex-P2. Thereafter the PW-8 along with the Inspector and accused went to the place called PathadiPaalam, where the accused handed over M.O.1 Knife which was seized under Ex-P3 Mahazar.

10.The PW-9 Doctor P.Karthikeyan deposed that on 20.03.2007 he had seen the both the dead bodies of Ganesan and Shankar brought to the hospital at 7.30 p.m. by PW-2 Gunasekaran and he noted the same in Ex-P15 AR Copy. On 21.03.2007 at 11.35 a.m. he conducted autopsy on the dead body of Ganesan and found Spindle shaped Puncture Wound measuring 2.0 X 0.5 cm over the Anterior Abdominal Wall and another irregular shaped injury of size 1.5 cm present in Inferior Venacava at the level of entry into Pericardium.

11.The PW-10 Doctor Raja deposed that he conducted autopsy on the body of deceased Shankar and found two injuries that are

- 1.) A Horizontally placed Spindle Shaped Cut Injury and
- 2.) An irregular abrasion over the knee joint.

12.The PW-12 Raja deposed that he is the investigation officer of Cr.No.170 of 2007. After taking investigation of the above said crime, he visited the place of occurrence at 21.30 hours and prepared observation mahazar Ex-P7 and Rough sketch Ex-P8 in the presence of witnesses. He also collected blood stained an ordinary mud from the place of occurrence under Ex-P10. He further deposed that he conducted inquest over the dead bodies of the deceased Shankar and Ganesan and prepared Ex-P11 and EX-P12 Inquest report. After coming to know about the surrender of the accused before the court, he took the accused to police custody and examined him on 23.03.2007 in the presence of PW-8 Balakrishnan and Subbarao and recorded voluntary confession statement of the accused. Thereafter he has seized M.O.1 Blood stained Knife under Ex-P3 Mahazar in the presence of PW-8. On 30.03.2007, he has examined Doctor and recorded the statements. He has also sent the material objects for forensic examination and received reports EX-P13 and Ex-P14 from the Forensic Department. Thereafter due to his transfer, he has handed over the case file to PW-13 Inspector of Police, who filed charge sheet on 30.06.2007 for the offence under section 302 of IPC on 2 counts.



conclusion that the charges laid against the accused were proved by the Eye witness led by the prosecution.

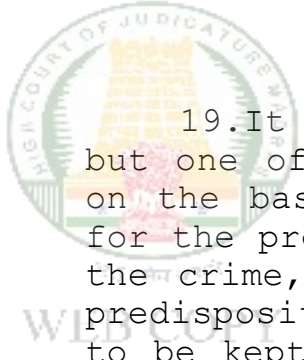
14. In the above circumstance that there is direct eye witness, the learned Trial Judge convicted the accused for the offences under section 302 of I.P.C holding that the prosecution case was proved on the sole eye witness. Against the said conviction, the present appeal has been filed.

15. We have heard Mr.A.Thiruvadi Kumar, learned counsel for the appellant and Mr.C.Ramesh, learned Assistant Public Prosecutor and we have also perused the records carefully.

16. In this case, according to learned counsel for the appellant the conviction of the appellant cannot be based on the evidence of such solitary eye witness PW-1 whose very presence at the time of occurrence was doubtful and further stated that she is the wife of one of the deceased Ganesan and therefore she is an interested witness. On the other hand counsel for the State submitted that PW-1 who is the wife of the deceased Ganesan was present in the place of occurrence and her presence at the time of occurrence was quite natural, since the place of occurrence was in front of her house. Merely because PW-1 happens to be the wife of the deceased Ganesan, her evidence can't be doubted. It was, therefore, submitted that PW-3 even though a solitary witness of the offence was fully reliable and her evidence provided sufficient basis for the conviction of the appellant.

17. The Relationship by itself is not a ground to discredit testimony of witness, if it is otherwise found to be consistent and true, as held by the Hon'ble Supreme Court in **Sarwan Singh v. State of Punjab**. The court has to consider the Quality not quantity of evidence material. Further, Section 134 of the Indian Evidence Act enshrines the well recognized maxim that "Evidence has to be weighed not counted". The matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable there is no legal impediment to the conviction of the accused person on such proof.

18. The Hon'ble Supreme Court in **Jagdish Prasad v. State of MP**, has held that testimony of a solitary witness can be acted upon, if entirely reliable and corroboration is required only in case of doubt or suspicion.



19. It is settled law that corroboration is not rule of law, but one of caution as an assurance. The conviction could be made on the basis of the testimony of solitary witness. The occasion for the presence at the time of occurrence, opportunity to witness the crime, the normal conduct of the witness to the victim, his predisposition towards the accused, are some of the circumstances to be kept in view to weight and accept the ocular evidence of a witness. It is not the quantum of the evidence but its quality and credibility of the witness that lends assurance to the court for acceptance.

20. In our considered opinion, the learned I Addl. District and Sessions Judge (PCR), Thanjavur has rightly placed reliance on the evidence of sole eye witness PW1 Manjula while convicting the accused/ appellant for the offence under Section 302 IPC because of the following reasons:-

(i) That in this case, the incident took place on 20.03.2007 at about 6.30 PM and the report Ex.P-1 was lodged by PW1 Manjula after taking the deceased into the hospital and after the deceased were declared dead by PW-9 and therefore, the question of delay argued by the learned counsel for the appellant cannot be accepted. That PW1 Manjula has clearly stated that since the accused had developed enmity with her husband deceased Ganesan and his friend Shankar 10 days prior to the occurrence with regard to the amount of Rs.300/- which was said to have taken by the deceased Shankar from the accused. On the date of occurrence i.e. on 20.03.2007 at about 6.30 PM when PW-1 was standing nearby her husband deceased Ganesan and his friend Shankar, the accused came there and gave knife blow on the chest of the deceased Shankar by saying that " you have taken Rs.300/- from me and I will not leave you without killing you". When it was questioned by the husband of PW-1, the accused had also caused knife blow on the chest of the deceased Ganesan. This fact is very well corroborated from the medical evidence as the post mortem reports Exs. P4, P5, P15 and P16 clearly shows that deceased received knife injuries on their chest, as stated by Dr. Karthikeyan, PW9 and Dr.Raja, PW-10. This circumstance alone is sufficient to treat PW1 Manjula as an eye witness.

(ii) In the present case, from reading the statement of PW1 Manjula, her presence at the place of occurrence appears to be natural one and there was nothing on record to suggest that she was not an eye witness. Hence, the argument that PW1 Manjula was not an eye witness stands rejected.

(iii) That this Court is aware that when sole eye witness is a close relative i.e wife of one of the deceased Ganesan, her evidence should be scrutinized very carefully and taking this aspect into consideration, when



the state- ment of sole eye witness PW8 Manjula is examined, it appears that her statement is straight forward, reliable and trustworthy and her statement gets corroboration from the medical evidence. Both the deceased received 2 injuries and PW1 has clearly stated that accused /appellant gave knife blow on the chest of the deceased and therefore, it cannot be said that she was telling lie on this aspect.

21.Furthermore, the statement of PW1 Manjula gets further corroboration from the statements of PW2 Gunasekaran and PW3 Selvam, who are her own brothers of the deceased Ganesan, on the point that when she saw that her husband deceased Ganesan and his friend Shankar were being stabbed by the accused /appellant; she shouted that the accused caused knife blow to the deceased, the PWs. 2 and 3 who were taking in the edge of the street rushed to the place of occurrence, corroborated the statement of PW 1 Manjula on that point. Apart from this, the best independent evidence in this case could be of PW 6 Shankar, an auto driver who was stopped by PWs 1, 2 and 3 for taking the deceased to the hospital. PW 6 Shankar who is an independent witness has stated that on 20.03.2007 at 6.30 P.M while he was coming from Nachiyarkoil towards Kumbakonam, his auto was stopped by group of people and he has taken both the deceased to hospital and dropped the deceased in the hospital. That from the statement of sole eye witness PW 1, it cannot reasonably be presumed or inferred that she was telling lie or falsely implicating the accused/ appellant with the commission of crime. Her statement appears to be straight forward, trustworthy and reliable and fully corroborated by medical evidence as well as from the statements of PW 2, PW3 and PW 6 and it does not suffer from material infirmity. Therefore, in these circumstances, if the learned trial Judge has placed reliance on the statement of the sole eye witness PW 1 Manjula while convicting the accused/appellant for the offence under section 302 IPC on two counts, he has committed no illegality in doing so, as from her statement, it is well proved that the accused/appellant gave knife (M.O.1) blows on both the deceased, as a result of which they died. In these circumstances, the evidence of PW-1 cannot be disbelieved merely because she happens to be the wife one of the deceased.

22.In Ramji Surjya v. State of Maharashtra (15), the Hoh'ble Supreme Court has observed that even where there is only a sole eye witness of a crime, a conviction may be recorded against the accused concerned, provided the court which hears such witness regards him as honest and truthful, but prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness ~~service court and by service~~ where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill-will is suggested.



23. Apart from this, as a general rule, a court can and may act on the testimony of a single witness, though uncorroborated, provided that testimony of that single witness is found out entire reliable and in that case, there will be no legal impediment for recording a conviction. But if the evidence is open to doubt or suspicion, the court will require sufficient corroboration.

24. The other view is that the Court of appeal must attach due weight to the opinion of the trial Judge who had the advantage of seeing the witnesses and noticing their look and manners. The rule of practice which has almost the force of law is that the appellate Court does not reverse a finding of fact rested on a proper appreciation of oral evidence. This is a case of Double Murder by the accused and the conviction and sentence imposed by the Learned Trial Judge under Section 302 of IPC on 2 counts is perfectly correct. Thus, it can be concluded that opinion of trial Judge on appreciation of evidence cannot be disturbed except for exceptional reasons. In the present case, we see no exceptional reasons.

25. For the reasons stated above, all the contentions raised by the learned counsel for the accused/appellant stand rejected and no interference is called for with the findings of guilt and conviction recorded by the learned 1st Addl. District and Sessions Judge (PCR), Thanjavur through impugned judgment dated 09.05.2009 against the accused / appellant for the offence under Section 302 IPC on two counts and this appeal deserves to be dismissed.

26. In the result, the criminal appeal is dismissed and conviction and sentence imposed on the appellant are hereby confirmed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

vsa/skn

To

1. The I Additional District and Sessions Judge
(Protection of Civil Rights), Thanjavur,
Thanjavur District.

2. The Inspector of Police, Kumbakonam West Police Station,
<https://hcservices.ecourts.gov.in/hcservices/>
Kumbakonam, Thanjavur District.



3 The Superintendent, Central Prison, Trichy.

4 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.A.Thiruvadi Kumar, Advocate Sr.N.69188

GJM/RR/MP-SAR-2-23.1.17-9p-6c

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