

VIJAYKUMAR

v.

STATE BY INSPECTOR OF POLICE, MADRAS AND ANR.
(Criminal Appeal No. 566-567 of 2002)

APRIL 21, 2009

[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ.]

*Appeal against acquittal – Appeal before High Court
against order of acquittal passed by trial court – Power of High
Court – Scope of – Discussed.*

*Penal Code, 1860: ss.302, 341, 307 r.w. s.302 r/w s.34 –
Assault by sword and knife allegedly resulting in death and
injuries to others – Acquittal by trial court – Conviction by High
Court – On appeal, Held: There was no delay either in taking
victim to hospital or in informing doctor about the occurrence
and in lodging F.I.R. – Evidence of P.W.1 relating to the attack
on deceased and taking of deceased to hospital was well
corroborated by documentary evidence and the oral evidence
of doctor – P.W.1 was related to deceased, however his
evidence cannot be rejected especially when he had no
reason to speak falsehood against both the accused –
Evidence of PW.3 who was an educated, independent, not
related and whose house was opposite to the place of
occurrence also found cogent and credible – Conviction
upheld – Evidence – Related witness.*

**Prosecution case was that deceased was assaulted
by the two accused persons with sword and knife and
in the process, one of the accused persons also got
injured. The trial court passed order of acquittal which
was set aside by the High Court. Hence the appeal.**

Dismissing the appeal, the Court

A HELD: 1. There is no delay either in taking the victim
to the hospital and informing the Doctor about the
occurrence and on the immediate information given by
the Doctor, P.W.1 came and got a complaint, registered
F.I.R. and observed other formalities by sending the F.I.R.
B to the Court without any further delay. This evidence of
P.W.1 relating to the attack on the deceased and P.W.1
and the taking of the deceased to the hospital has been
well corroborated by documentary evidence Exs.P1, P4
and P5 and the oral evidence of P.Ws.4 and 11. The
C Doctor P.W.4 also would state that the injuries found on
the deceased and P.W.1 could be caused by M.Os.1 and
2. [Paras 12 and 13] [928-C-E]

2. Admittedly, there are two types of injuries on the
body of the deceased. P.W.4 Doctor specifically stated
D that some injuries are curved injuries and some injuries
are cut injuries. The reading of the evidence of P.W.4,
who conducted postmortem on the body of the deceased
found as many as eight injuries. The first injury was
curved. P.Ws.1 to 3 stated that A1 inflicted the injuries by
E MO1. Merely because P.W.1 happens to be the brother of the
deceased, his evidence cannot be rejected especially
when he had no reason to speak falsehood against both
the accused. It is settled law that the relative witness
would not allow the real culprit to escape and implicate
F the person who is innocent. But however, the evidence
has to be carefully analysed. In this case, the evidence
of P.W.1 has not only been corroborated by the other
materials referred to above but also the evidence of
P.Ws.2 and 3, who are independent and unrelated
G witnesses. P.W.2 at the time of occurrence was studying
in the school. He is the friend of brother of P.W.1.
According to him, on the date of occurrence, P.W.2 and
his friend accompanied P.W.1 and the deceased to go to
river for taking bath. On the way, the occurrence had
H taken place. He could state about the occurrence only.

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He did not refer about the other happenings with reference to the motive as spoken to by P.W.1. At the time of deposition, he was studying B.A. He clearly corroborated the evidence of P.W.1 with reference to the overt acts attributed to each of the accused. Nothing has been elicited from P.W. 2 that he had anything to speak falsehood against the accused. As a matter of fact, when the victim was taken in a car to hospital, he also accompanied him. When Ex.P1 complaint was given to P.W.11 Head Constable, P.W.2 attested the said complaint. In Ex.P1 also the name of P.W.2 is mentioned. P.W.2 was examined at the hospital during the course of inquest by P.W.14. Therefore, there is no reason to reject the evidence of P.W.2. [Para 14, 15, 16 and 17] [928-E-H; 929-A-F]

3. The most important witness in this case is P.W.3, whose house is situate very near to the place of occurrence. According to her, on 10.8.1990 at about 8.30 A.M., she came out of the house and when she was proceeding towards Southern side for taking water, she saw that the accused came and attacked deceased and while PW1 intervened, he was also attacked. Admittedly, she is not related to the deceased family. There is nothing to indicate that P.W.3 was having any animosity to speak falsehood against the accused. The reading of her deposition would make it clear that she is very natural and reliable witness. In the light of the above position, it can be held that even assuming that the evidence relating to the arrest and recovery is not to be acted upon, the prosecution succeeds on the basis of the evidence of ocular testimony adduced by PWs. 1 to 3. Out of these three witnesses, it is to be emphatically stated that the evidence PW.3 who is an educated, independent, not related and whose house is situated opposite to the place of occurrence would inspire confidence that what all she stated before the Court is cogent and credible.

A [Para 18, 19 and 20] [929-F-H; 930-A; 930-D-E]

Ajit Savant Majagvai v. State of Karnataka 1997 (7) SCC 110 and *Narinder Singh v. State of Punjab* 2000 (4) SCC 603, relied on.

B

Case Law Reference:

1997 (7) SCC 110 relied on Para 7

2000 (4) SCC 603 relied on Para 7

C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 566-567 of 2002.

From the Judgment and Order dated 6.2.2002 of the High Court of Judicature, at Madras in Crl. Appeal No. 204/1994 and in Crl. R.C. No. 7 of 1994.

D

Ranjit Kumar, K.V. Viswanathan, Nataraja Murthy, B. Raghunath and Vijay Kumar for the Appellant.

Indira G., Rajkumar, John Mathew, Prabhakaran, Prasanth and S. Thananjayan for the Respondents.

E

The Judgment of the Court was delivered by

F

DR. ARIJIT PASAYAT, J. 1. These appeals have been filed by Vijaykumar who is accused no.2. Challenge is to the judgment of the Division Bench of the Madras High Court allowing the Criminal Appeal filed by the State and the Criminal Revision filed by the informant. Two accused persons faced trial for alleged commission of offence punishable under Sections 341, 302, 307 and 302 read with Section 34 IPC. They were acquitted by the trial Court i.e. by learned Sessions Judge, Kanyakumari Division, Nagarcoil. As noted above, the State and the informant questioned the acquittal.

G

2. Background facts in a nutshell are as follows:

H

The deceased Johnson is the elder brother of Ravi Kumar(PW.1). The first accused Rasalaiyan and the second

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accused Vijaya Kumar are cousin brothers. PW.2 Suresh Kumar is the friend of PW.1 Vanaja (PW.3) is residing in a house situated very near to the place of occurrence. All these people belong to same village. A

Three years prior to the date of occurrence, Vincent, the elder brother of the accused was selling illicit arrack in a village. On being questioned over the same by Johnson, the deceased, enmity developed between them. Consequently, the said Vincent assaulted Johnson with reference to which a police case was registered. B

On 10.8.1990 at about 8.30 a.m., Ravi Kumar (PW.1), his friend Suresh Kumar (P.W.2) and his brother Raj Kumar along with the deceased Johnson were proceeding towards a river situated at the corner of the village for taking bath. At that time, both the accused appeared in the scene and waylaid them. Rasalaiyan, the first accused was carrying a sword (Tamil) in his hand. Vijay Kumar, the second accused was having a big knife (Tamil) with him. Both of them restrained Johnson from proceeding and exclaimed "You are always disturbing us. Therefore, you should not be allowed to live any more" and so saying, A1 Rasalaiyan with the sword M.O.1 attacked him. When the same was warded off, the cut fell on the left hand. Again A1 Rasalaiyan attacked on the back of the head and forehead. A2 Vijaya Kumar with the big knife M.O.2 gave a cut on the buttocks of the deceased. On receipt of the injuries, Johnson sat down. Then, again A2 Vijaya Kumar with M.O.2 gave cuts on the left arm, right hand and face. A1 Rasalaiyan with the sword M.O.1 attacked again by inflicting injury on his back. At that time, accidentally, one of the cuts fell on the second accused. When PW.1 rushed and went near Johnson and tried to intervene, A1 attacked him also and caused injury on the left parietal region. The witnesses who were present there raised a hue and cry. Both the accused ran away from the scene with the weapons. C D E F G

Within a few minutes, a car was arranged and the victim H

A was taken to the hospital. Doctor (PW.4) examined him and declared that he was already dead. PW.4 also gave treatment to PW.1 for his injuries. Then, he sent intimation Exs. P4 and P5 to the police Station at Kuzhithurai.

B Head Constable (PW.11), on receipt of this intimation, went to the hospital and recorded the statement Ex.P1 from PW1 at about 9.30 a.m. The case was registered for the offence under Sections 341, 324 and 302 IPC against both the accused. He sent Ex.P19 FIR to the Magistrate and sent one copy to Kaliyakkavilai Police Station, the jurisdiction police.

C Therefore, PW.4 came to the scene, prepared observation mahazar Ex.P8 and rough sketch Ex.P2 and recovered blood stained earth M.O.8 and sample earth M.O.9 under mahazar Ex.P9. PW.6 Gopalakrishnan and another attested Exs. P8 and P9.

D Various injuries were found on the body of the deceased. Investigation was undertaken and on completion thereof charge sheet was filed. Accused pleaded innocence and faced trial.

E 3. On considering the materials on record the trial Court acquitted both the accused persons.

4. The reasoning given by the Trial Court for acquittal is as follows:

F "There had been jealousy between the families of Vanaja and Ravikumar and his family. As stated by his elder brother, the first accused herein, since the first accused had not agreed to marry the younger sister of Vanaja, there had been enmity between Vanaja and Ravikumar and his family. On 10.8.1990 at about 6.30 a.m.

G in the morning, when he was going to take bath in the river at Mulamootuvilai, Johnson and 4 or 5 persons along with him came there having Aakkathi, knife and stones in their hands and attacked him. He had sustained grievous injury.

H They had attacked him on his cheek and back with stones.

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Grievous injury had occurred to him. He thought that they would murder him. A fight had occurred between him and those persons. He escaped from there and when he went to Kaniyakkavilai Police station for giving a complaint, the police made him to sit there. Since his vision was not proper and he was suffering from pain, the police took a doctor from a nearby place and gave him medical treatment. On 12.8.1990 they took him to the Government Hospital at Kuzhithurai. There he was given medical treatment. On 13.8.1990 they produced him before the Court at Kuzhithurai. From there he was sent to the Government Hospital at Nagarcoil and he had been there as an inpatient. Then from there he was sent to the Government Hospital at Kuzhithurai and he had been there as an inpatient. He had not committed any offence. He is innocent. At present he is working in the military. For the purpose of this case, at present he is at Trivandrum Camp. On the side of the accused no witness had been examined. Hence the arguments on both sides were heard."

5. The High Court observed that the reasons for the acquittal are totally erroneous based on conjectures and surmise. The High Court noted that while arriving at conclusions trial Court discussed various aspects which were not actually available on record. The High Court set aside the acquittal.

6. Questioning the judgment, as noted above, A2 has filed this appeal. It is submitted by learned counsel for the appellant that the evidence of PWs1 and 2 cannot be treated as credible. They were students. PW3 was introduced to provide strength to the prosecution evidence. Since recovery has been disbelieved, the High Court should not have interfered. The nature of the injuries on the deceased clearly shows use of weapons as claimed is unbelievable. PW1's statement cannot be treated as FIR in view of Exhibits 4 and 5. The trial Court's judgment did not warrant interference, and in any event the

- A injuries were not on any vital part and, therefore, it is not a case of Section 302.

7. ~~Learned~~ counsel for the respondent-State on the other hand supported the judgment.

- B 8. This Court in *Ajit Savant Majagvai v. State of Karnataka* (1997 (7) SCC 110) and *Narinder Singh v. State of Punjab* (2000 (4) SCC 603) laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by a trial Court. The principles which have been set out on innumerable cases have been reiterated as under:

- D (1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

- E (2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

- F (3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

- G (4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

- H (5) If the High Court, on a fresh scrutiny and

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reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

9. In the instant case PWs 1 and 2 were treated by the doctor (PW3) around 8.40 p.m. Exhibits 4 and 5 are the intimation regarding the occurrence and were sent immediately. PWs 4's evidence clearly shows presence of PW1. PWs. 2 and 3 are independent witnesses.

10. When PWs. 1 to 3 and others cried aloud and the victim fell down in pool of blood, the accused ran away from the scene. Immediately, a car was brought. At that time, the victim was alive. Therefore, in order to give immediate treatment to him, the car brought and he was rushed to the hospital. Then, PW4 informed them that the victim had already died. Without any delay, at 8.45 a.m., PW4 sent intimation to the Kuzhithurai Police.

11. In the meantime, P.W.4 gave treatment to P.W.1 and found a cut injury on the left temporal region and issued accident register Ex. P6. P.W.1 gave information to the Doctor P.W.4 that he was attacked by two known persons on 10.8.1990 at about 8.30 A.M. in his village. Exs. P6, could show that the Doctor was informed that two known persons had attacked the deceased and P.W.1 in Mulamootuvilai village

A with weapons.

12. On receipt of the information, P.W. 11 Head Constable attached to the Kuzhithurai Police rushed to the hospital and recorded the statement of P.W.1 at 9.20 A.M. on the same day. Since the jurisdiction Police is at Kaliyakkavilai, the F.I.R. was sent to the said police. P.W.12, the Kuzhithurai Constable got the F.I.R. copy and handed over the same to P.W.13, the Head Constable of Kaliyakkavilai Police Station at about 11.00 A.M. There also, a case was registered by registering separate F.I.R. P.W.13 at about 11.30 A.M. sent the F.I.R. copy to the Court. P.W.12 handed over the F.I.R. copy relating to the Kuzhithurai Police Station at 12.00 Noon to the Court. Therefore, there is no delay either in taking the victim to the hospital and informing the Doctor about the occurrence and on the immediate information given by the Doctor, P.W.1 came and got a compliant, registered F.I.R. and observed other formalities by sending the F.I.R. to the Court without any further delay.

13. This evidence of P.W.1 relating to the attack on the deceased and P.W.1 and the taking of the deceased to the hospital has been well corroborated by documentary evidence Exs.P1, P4 and P5 and the oral evidence of P.Ws.4 and 11. The Doctor P.W.4 also would state that the injuries found on the deceased and P.W.1 could be caused by M.Os.1 and 2.

14. Admittedly, there are two types of injuries on the body of the deceased P.W.4 Doctor specifically stated that some injuries are curved injuries and some injuries are cut injuries. The reading of the evidence of P.W.4, who conducted postmortem on the body of the deceased found as many as eight injuries. The first injury was curved. PWs.1 to 3 stated that A1 inflicted the injuries by MO1.

15. Merely because P.W.1 happens to be the brother of the deceased, his evidence cannot be rejected especially when he had no reason to speak falsehood against both the accused. It is settled law that the relative witness would not allow the real

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culprit to escape and implicate the person who is innocent. But A
however, the evidence has to be carefully analysed.

16. In this case, the evidence of P.W.1 has not only been
corroborated by the other materials referred to above but also
the evidence of P.Ws.2 and 3, who are independent and B
unrelated witnesses.

17. P.W.2 Suresh Kumar at the time of occurrence was
studying in the school. He is the friend of Raj Kumar, who is
the brother of P.W.1. According to him, on the date of
occurrence, P.W.2 and his friend Raj Kumar accompanied C
P.W.1 and the deceased to go to river for taking bath. On the
way, the occurrence had taken place. He could state about the
occurrence only. He did not refer about the other happenings
with reference to the motive as spoken to by P.W.1. At the time
of deposition, he was studying B.A. in Nesamani Christian D
College. He clearly corroborated the evidence of P.W.1 with
reference to the overt acts attributed to each of the accused.
Nothing has been elicited from P.W. 2 that he had anything to
speak falsehood against the accused. As a matter of fact, when
the victim was taken in a car to hospital, he also accompanied E
him. When Ex.P1 complaint was given was given to P.W.11
Head Constable, P.W.2 attested the said complaint. In Ex.P1
also the name of P.W.2 is mentioned. P.W.2 was examined at
the hospital during the course of inquest by P.W.14. Therefore,
there is no reason to reject the evidence of P.W.2 F

18. The most important witness in this case is P.W.3
Vanaja, whose house is situate very near to the place of
occurrence. According to her, on 10.8.1990 at about 8.30 A.M.,
she came out of the house and when she was proceeding
towards Southern side for taking water, she saw that the G
accused came and attacked Johnson and while PW1
intervenved, he was also attacked. Admittedly, she is not related
to the deceased family.

19. There is nothing to indicate that P.W.3 was having any H

- A animosity to speak falsehood against the accused. The reading of her deposition would make it clear that she is very natural and reliable witness. Ex.22 rough sketch and Ex.P8 observation mahazar also would make it clear that the occurrence had taken place just opposite to her house and from that place, the
- B blood stained earth was seized under Ex.P9 mahazar attested by her husband P.W.6 Gopalakrishnan on the very same day. She also stated that she had finished her S.S.L.C. and after her marriage, she was living with her husband Gopalakrishnan near the place of occurrence. On coming to know that the victim
- C who was taken to hospital died, she went to the hospital to see the dead body. She gave the reason as to why she went to hospital immediately by stating that:

"The person who does not know any thing was killed so I went to Kuhithurai Hospital to see Johnson."

- D
20. In the light of the above position, it can be held that even assuming that the evidence relating to the arrest and recovery is not to be acted upon, the prosecution succeeds on the basis of the evidence of ocular testimony adduced by PWs.
- E 1 to 3. Out of these three witnesses, it is to be emphatically stated that the evidence PW.3 who is an educated, independent, not related and whose house is situated opposite to the place of occurrence would inspire confidence that what all she stated before the Court is cogent and credible.

- F 21. Above being the position, we find no merit in these appeals which are accordingly dismissed.

D.G.

Appeal dismissed.