JOSEPH

v.

STATE OF KERALA

DECEMBER 3, 2002

[S. RAJENDRA BABU AND ARUN KUMAR, JJ.]

Penal Code, 1860: Ss. 34, 302, 307 & 341:

Murder—Acquittal of one of the accused by Trial Court—High Court convicting that accused—Correctness of—Held, since Trial Court had given cogent reasons while acquitting the accused, High Court ought not to have interfered with the same merely because another opinion is possible.

Evidence Act, 1872; Section 134:

Testimony of Sole eye-witness—Reliance thereupon—Held, evidence of such witness could be accepted if it corroborates with the evidence of other witnesses/other evidence on record—Conviction could be recorded on the evidence of solitary eye witness provided such evidence is cogent, reliable and inspires confidence.

According to the prosecution, PW1 and the deceased were proceeding to their houses when they were wrongfully restrained by three accused persons resulting in some altercations. Accused stabbed the deceased on the chest and PW1 on the neck. PWs.2 to 4 had taken both the injured to the hospital where the deceased succumbed to his injuries. Police recorded statement of the injured witness, PW1, in the hospital. The case of the prosecution rested solely on the evidence of PW1. Trial Court found the charges against the accused including appellant were not established and acquitted them. On appeal by the State, High Court convicted one of the accused (appellant) as evidence against him was clear and convincing and confirmed the acquittal of other two accused. Hence this appeal by the convicted accused.

Allowing the appeal, the Court

HELD: 1.1. When there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded. [446-D-E]

A **1.2. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a Court to record and sustain a conviction on the evidence of a solitary eye witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this** B **standard, when prosecution case rests mainly on the sole testimony of an eye-witness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial Court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be** C **unreasonable. High Court ought not to have interfered with the same merely because another opinion is possible and not that the finding concluded by the trial Court was impossible. [446-H; 447-A-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 620 of 1995.

D

From the Judgment and Order dated 2.3.1995 of the Kerala High Court in Crl. A. No. 324 of 1991.

E.M.S. Anam, for the Appellants.

E Ramesh Babu M.R., Sushil K. Terkriwal and K.R. Sasiprabhu, for the Respondent.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellant and two others were prosecuted F for offences under Sections 341, 307 and 302 read with Section 34 IPC on the allegation that on 9.7.1989 near the bunk shop of one Kolasseri Pappachan at Konipadu junction, they restrained from moving on the road, murdered Simon and caused hurt to Benny [PW.1] and ran away. The Trial Court found that the charges against the appellant and the other accused were not G established and acquitted them. The State preferred an appeal in the High Court. A Division Bench of the High Court set aside the order of acquittal and recorded the conviction against the appellant but did not disturb the order of acquittal made by the Trial Court with respect to the other two accused.

H The prosecution case as unfolded in the Trial Court is that the injured

witness, Benny [PW.1] and the deceased Simon were proceeding to their houses from west to east along Konipadu-Moonnilavu Road after purchasing beedi from the shop of one Mathachan at Konipadu junction. All the three accused who were moving ahead from Konipadu junction wrongfully restrained the deceased and Benny [PW.1] from proceeding on the road by asking them as to "why they were pretending to be big". It appears that the deceased asked the accused as to whether they would not permit others to walk along the road peacefully. Thereupon A-2 exhorted "Do away with him". On hearing this, A-1 took out a knife and stabbed the deceased on the right part of his chest. Having sustained this injury, he ran towards the west. Then A-3 is stated to have asked A-1 to do away with Benny [PW.1] also. So the appellant stabbed Benny [PW.1] on his left palm with the same knife and he again stabbed him on the left side of his neck. Benny [PW.1], however, could ward off and ran towards west and reached Konipadu junction. On the way he found deceased, Simon to have fallen down. He then narrated the incident to PWs 2 to 4, who rushed to the scene of occurrence. Benny [PW.1] and the deceased, Simon were taken to the Government Hospital, Palai in a jeep owned and driven by PW.5. However Simon succumbed to the injuries at 7.45 p.m. on way to the hospital.

The Trial Court observed that on the basis of the material on record through the evidence of the doctors supported by Exhibits P-7 and P-8 that the deceased Simon and Benny [PW.1] had sustained injuries on 9.7.1989 and Simon died as a result of the injuries sustained by him in the said incident. This part of the case is not in serious dispute.

The case of the prosecution rested solely on the evidence of Benny [PW.1], the injured witness. In the course of his evidence, Benny [PW.1] disclosed the facts to which we have already adverted to and he also stated that he rushed to Konipadu junction at once and informed of the incident to PWs 2 to 4 who were present there and then returned to the place where Simon had fallen. Thereafter PWs 2 to 4 also reached there. He stated that they reached the hospital within one hour and Doctor PW.11 examined the deceased and declared him dead. Benny [PW.1] was admitted there and treated as an in-patient. He stated that at about 5 a.m. on 10.7.1989 the police came to the hospital and recorded his statement. Ex. P-1 is his first information statement recorded by the police in the case and he also claimed to have identified MO-1 as the weapon of offence when shown to him by the police.

Before the Trial Court, four contentions were advanced on behalf of the

A defence:

1. Ex.P-1 first information statement is a spurious document created by the prosecution,

2. The uncorroborated testimony of PW.1 is unworthy of credence being tainted with falsehood,

B

3. The medical evidence is inconsistent with the prosecution version, and

4. There is no valid recovery as contemplated under Section 27 of the Evidence Act of the weapon of offence used in the case.

C

Inasmuch as both the Trial Court and the High Court have not relied upon the recoveries effected, it is not necessary to advert to the last contention raised before the Trial Court.

The evidence adduced before the court disclosed that the deceased, D Simon and Benny [PW.1] were brought to the Government Hospital, Palai by about 8 p.m. on 9.7.1989. Doctor PW.11, after examining the deceased, Simon declared him dead. He admitted Benny [PW.1] in the hospital and sent two intimations to the police. PW.15 is the Head Constable attached to the Palai Police Station and Ex.C-1 is the Police Intimation Book maintained in the E hospital. PW.15 had admittedly put his initials on Exbs.C-1(a) and C-1(b) and he also admitted that he had received intimation at about 10 PM on 9.7.1989. The place of occurrence is within the jurisdiction of Melukavu Police Station. PW.15 states that he had tried several times to contact Melukavu Police Station on telephone but could not get connection. According to him at about 4 a.m. he got the connection and came to know that the ASI of Police [PW.13] F had already gone to the hospital to record the first information statement of PW.1. PW.13 states that at about 4 a.m. on 10.7.1989, he received a telephonic information from one Jojo that there had been a stab incident at Konipadu. According to him it was on the basis of this information that he rushed to the hospital and recorded Ex.P.1 statement and registered the case. PWs. 3 and 5, who had been examined before the court, suggested another version G of the matter. PW. 5, who is stated to be the owner-cum-driver of the jeep in which the deceased Simon and injured Benny were taken to the Government Hospital, Palai. He has admitted that he had taken them to the hospital in his jeep. PW.3 had also accompanied them to the hospital. They reached the hospital at about 8 PM on 9.7.1989. PW.5 further stated that after taking them H to the hospital he had taken PW.2 Jose and one or two others to Palai Police

Station after 8.10 PM to give information about the incident. The fact that the police came to the hospital after some time is spoken to by PW.3. This witness categorically stated that they reached the hospital at about 9.30 PM when they saw the police questioned the injured Benny [PW.1] and recorded his statement which was read over to the injured and he subscribed his signature to the same. PWs.3 and 5 were not declared hostile by the prosecution. Based on this evidence, the Trial Court drew an inference that one of the officers of the Palai Police Station got information about the incident, proceeded to the Government Hospital, Palai, recorded the first information statement of PW.1 and registered the case and that version was probable. The Trial Court therefore, observed that it is clear that the prosecution had two first information statements, one recorded at 9.30 p.m. on 9.7.1989 and the other recorded at 5 a.m. on 10.7.1989. The first one is suppressed and the other is produced. The Trial Court, therefore, did not find it safe to rely upon the subsequent statement. The Trial Court also had reservations as to the evidence tendered by PW.15 inasmuch as he after receipt of the information as per Exs.C.1(a) and C.1(b) did not proceed to the hospital and record the first information statement of PW.1 and, therefore, concluded that no reliance could be placed on his evidence, particularly in a case of this nature. The Trial Court found it difficult to rely upon the first information statement said to have been recorded at 5 a.m. on 10.7.1989 by Melukavu Police Station. Therefore, in view of the two versions put forth before the court grave suspicion would arise as to what had happened in the matter. Further the Trial Court noticed that there is dissimilarity in the signature of PW.1 on Ex.P.1 PW.1 admitted to have signed Ex.P.1 but the Trial Court observed that a bare perusal of the signatures in the above document would clearly show that there is no similarity between the signature on that document and the signature of PW.1. On summons in acknowledgement of having received it PW.1 had also admitted that there are marked dissimilarities between his signature on Ex.P.1 and Ex.D.1. The explanation offered was that he had pain all over the body while signing and therefore, he might not have signed properly. The Trial Court, therefore, held that in this background Ex.P.1 is not a reliable document.

The evidence of PW.14, the Circle Inspector of Police supported by Ex.P.4 scene mahazar would show that there was a pool of blood at the scene of occurrence. PW.1 stated that the deceased, Simon after having sustained the injuries ran towards west from the scene of occurrence covering the injuries with hand and his categorical statement in the cross-examination that deceased, Simon had not fallen down on the spot on sustaining the injuries. PW.1, who sustained injuries on his left palm and left side of the neck also,

A ran towards Konipadu junction from the scene of occurrence. The presence of pool of blood in the circumstances would indicate that the occurrence might not have taken place in the manner alleged by the prosecution. On this basis, the Trial Court found that the evidence of PW.1 to be highly suspicious. Further the Trial Court analysed his evidence with reference to the fact that the incident to had taken place at about 7 p.m. on a cloudy day and when B sunset would take place in the place of occurrence between 6.45 p.m. and 6.47 p.m. and that again threw a lot of suspicion on the evidence tendered by him.

The trial court also took into account whether the injuries sustained by the appellant could have been caused in the manner deposed to by PW.1. He C stated that the 1st accused stabbed him with MO1 knife and injury No. 1 in Exhibit 7, which is the Wound Certificate, is a cut injury on the left palm. The evidence of the doctor indicated that if the said injury was caused due to a stab, there must have been tailing at one end of the injury; that, in the present case, there was no tailing for that injury; that would clearly indicate that he had not sustained any stab injury. On his neck there is a linear horizontal D abrasion 4 cms x 2mm in size. According to the witness, he was profusely bleeding from the said injury. However, the medical expert said that this injury was not a bleeding injury and that injury could be caused by contact with human nail during the course of a scuffle. PW.1 further stated that at the time of stabbing, the 1st accused and the deceased were standing face to face, E whereas PW.12 who conducted the autopsy had noted an incised penetrating wound on the front side of the chest and stated during the cross examination that if the assailant and the victim are standing face to face it is unlikely to cause the above injury. The trial court was of the view that the medical evidence did not support the prosecution case and did not believe the recovery of MO1 knife and further held that no motive was established. In F these circumstances, the trial court acquitted the accused because the evidence adduced by the prosecution did not bring about the truth and the matter was shrouded in mystery.

On appeal by the State, the Division Bench of the High Court re-examined the matter and analysed the evidence from various angles. Firstly, G it noticed that PW.13 had recorded the statement of PW.1 at 5 a.m. on 10.9.1989 on information having been received from the hospital over telephone that there was a stabbing incident at Monnlpadbhagom in which two persons sustained injuries and who had been removed to the Palai Government Hospital; that the informant did not have any details of information and thus without H wasting any time he rushed to the hospital; that he located PW.1 who was

undergoing treatment and his statement was recorded and his signature obtained on the same; that inasmuch as Simon had succumbed to the injuries sustained by him, question of recording his signature could not arise. On the same day, the FIR was registered at 10.30 a.m. In Exhibit P 1 the essential details of the incident and the names of the accused had been given. In evidence tendered before the Court by PW.1, he corroborated his version in Exhibit P 1 in all materials aspects. He stated that there was sufficient light probably twilight to identify the accused. Though he has not specifically stated in Exhibit P 1 that after the incident he met PWs 2 to 4 at Konnipad junction, told them as to what had happened and they rushed to the scene. PWs 2 to 4 reached the place of incident a little after the incident. The statement of PW 5 not containing the details as to who had caused the injuries to the deceased and PW.1 was not significant. The High Court also rejected the theory of two FIRs had come into existence and noticed that PW.1 admitted the difference in his signature in Exhibit P.1 and Exhibit D.2, which he had done on the acknowledgement of the summons having received by him; that when PW.1 himself had no case about the forgery and had owned not merely the authorship of the complaint but his signature as well, the trial court need not to embark upon a comparison of the signature in Exhibit P.1 and Exhibit D.2. Though agreeing that PW. 15 had not discharged his duties properly as GD charge of the Police Station after receiving intimation as per Exts. Cl(a) and (b) from the Government Hospital, Palai, the High Court brushed aside the same as being unfortunate. The High Court discarded the theory that some police officers had recorded the statement of PW.1 on the night of the incident and on that basis, held that there was no case at all made out in that regard and PWs 3 and 5 denied having given any complaint prior to Exhibit P 1. The High Court also did not place any reliance upon the recoveries effected. On the discrepancies between the medical evidence and the oral evidence adduced before the Court, the High Court stated that the learned Sessions Judge had strained to stress minor discrepancies and had made a sweeping statement in regard to the effect of a discrepancy between the medical opinion and oral testimony. The High Court did not also attach importance to the spot Mahazar, Exhibit P 3 which had noticed that there was blood at the scene of the incident. Therefore, the High Court held that the evidence is clear and convincing that the appellant stabbed the deceased to death and proceeded to reverse the judgment of the trial court and convicted the appellant.

This is a case in which there is a solitary eye witness who has given evidence before the court. His evidence is attacked on various grounds: that

A the Exhibit P 1 (FIR) is not correct; that Exhibit P 5 is an intimation that had been sent by the police station; that his statement had been recorded at 9.30 p.m. in the night by the police; that no motive was set out in the evidence tendered before the Court though there was an attempt to do so in Exhibit P 1; that no statement of going to junction is forthcoming in the evidence of PWs 2 to 4 which is contradictory to the statement made by PW.1 and
B Doctor's (PW.11) evidence which is clearly to the effect that the injury on the neck of PW.1 could not have been caused by any weapon and was not a bleeding injury; that the appellant's clothes stated to be blood stained but the same had not been seized; that neither in the Wound Certificate nor in any other place the names of the accused had been mentioned; that when the
C Trial Court had disbelieved the evidence tendered by PW.1, the High Court could not have given a contrary finding, when the former view is possible.

The learned counsel for the respondent, on the other hand, urged that the High Court has properly analysed the evidence on record and has correctly come to the conclusion and thus calls for no interference.

D

In a case of this nature when there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded. What is urged before the Court is that FIR - Exhibit P 1 contained signature of a doubtful character which PW.1 himself admitted as having been
E different from the one given by him on the acknowledgement of having received the summons. How far reliance can be placed upon his evidence when PW.1 stated that he had rushed to the junction to inform PWs 2 to 4 and thereafter rushed back to the place of the incident, while the deceased also run on the western side of the place of incident though he was profusely
F bleeding and he got hold of his wound by his hand and ran. If that is so, there would have been blood all over the place and not at one particular point. The abrasion on the neck of PW.1 could have been caused by a nail scratch and not by a weapon and was not a bleeding injury will clearly belie the statement made by him that he was profusely bleeding. If really the witness (PW.1) was wearing blood stained clothes the same would have been certainly
G seized by the police for appropriate investigation of the same. Particularly, when the trial court had given cogent reasons to acquit the accused, the High Court ought not to have interfered with the same merely because another opinion is possible and not that the finding concluded by the trial court was impossible.

H To our mind, it appears that the High Court did not follow the aforesaid

standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eye witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when prosecution case rests mainly on the sole testimony of an eye-witness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable.

In that view of the matter, we allow this appeal, set aside the order of conviction passed by the High Court and restore the order of acquittal passed by the learned Sessions Judge. The appeal is allowed accordingly.

S.K.S. Appeal allowed.