

CASE NO.:
Appeal (crl.) 972 of 2004

PETITIONER:
SEEMAN @ VEERANAM

RESPONDENT:
STATE, BY INSPECTOR OF POLICE

DATE OF JUDGMENT: 12/05/2005

BENCH:
P. VENKATARAMA REDDI & P.P. NAOLEKAR

JUDGMENT:
JUDGEMENT

P.P.NAOLEKAR, J.

Three accused persons viz., Seeman, Neelagiri and Leelavathi, were tried for committing murder of one Murugan, under Section 302 IPC. Accused \026 appellant no.1 was convicted and sentenced to undergo life imprisonment by the Sessions Court. The other two accused persons were acquitted. The said conviction and sentence, having been confirmed by the High Court, the appellant challenged the same before this Court by filing this appeal. The prosecution case, in short is that the deceased Murugan was the resident of Village Chithakkur. Three years prior to the occurrence, deceased Murugan and a girl named Kani fell in love and eloped from the Village. They were brought back by the villagers. After some time, Kani was married to some other person and deceased Murugan also got married to some other girl of a nearby village. On account of this incident, the accused persons had grudge to grind against the deceased, having brought bad name to the family and were awaiting an opportunity to take revenge. The deceased was advised by the well-wishers to leave the Village and settle down at some other place. He settled at Village Kariappati. On the day of the incidence, i.e., 26.1.92 deceased came to Chithakkur in search of his grandmother. At the Village, he was informed that his grandmother has left the Village and has gone to a place Thirukkani to collect her pension. The information was given to him by PW2 \026 Raja @ Perumal. Thereafter, the deceased along with Raja @ Perumal proceeded towards the bus stand so that the deceased could catch a bus. At the bus stop when the deceased along with PW-2 were awaiting for a bus, they saw accused no.2 at the bus stop who stared at the deceased. Apprehending that some untoward incident may happen, he was advised to go to the residence of PW-1-Danam @ Balasubramanian. In the meanwhile the bus came and stopped at some distance from the place where they were standing and the deceased rushed towards the bus. At that time accused no.3 holding broom in her hand accosted the deceased as to why he was running and asked him to stop. Suddenly, accused no.1 appeared at the bus stop and attacked the deceased with patta knife and inflicted number of injuries. The deceased fell down on the spot and succumbed to his injuries. PW1 lodged the FIR immediately after the incident claiming that he himself, one Jayaraj and Raja witnessed the incident. The postmortem on the dead body was conducted by PW-7 - Dr. Edwin Joe who found the following injuries on the person of the deceased.

1. Transverse cut injury and sides of neck
21 cms. Length x 5 cms. X 9 cms., the right end

is 8 cms. Below and front of right ear, the left end is 7 cms. below and back of the left ear and 0.5 cm. below chin. The wound is found to have cut the underlying muscles, wind pipe between thyroid and hyoid bone, food pipe, the left carotid artery and jugular veins on both sides and cutting the 4th cervical vertebrae 4 x 0.5 x 2 cms. and the underlying cord partially. The edges are clear cut.

2. An oblique skin deep incised wound 6 cms. length lateral aspect of middle of right arm.

3. A vertically oblique cut wound left fronto-parietal region 5 x 1 cm. cutting the underlying bone 10 cms. above left earlobe.

4. A flapping cut injury 4 x 3 x 2 cms. (muscle deep) on the right posterior occipital region with a skin flap hanging downwards 3 cms. lateral to the midline.

5. Scratch abrasion 3 cms. length top of right shoulder.

6. Abrasion 1 x 0.5 cm. and 0.5 x 0.5 cm. inferior angle of right scapula.

The Sessions Court convicted Appellant No.1 relying on the statement of PW1 and PW2 and drew corroboration to their testimony from medical evidence. The other two accused were acquitted giving benefit of doubt. The High Court has only relied upon the statement of PW2 as an eye-witness and found corroboration to his statement from the medical evidence. The evidence of PW1 was relied upon only for the purposes of setting the law into motion by lodging an FIR. The learned counsel for the appellant has challenged the conviction of A-1 contending that:

(i) the statement of PW1 being the sole eye-witness, cannot be relied upon for convicting the accused, particularly when he is the close relative of the deceased and when the independent evidence was available with the prosecution; (ii) the presence of PW2 at the place of incident itself is doubtful. In fact it was the brother of PW2, Raja who was named as an eye-witness in the FIR and not PW-2 Raja @ Perumal. Apart from this PW2's statement in regard to other acquitted accused having been discarded by the Court, the statement, as regards the accused appellant, does not inspire confidence and (iii) it is further urged that the statement of PW-2 is not fully supported by medical evidence. The injury which has been attributed to have been caused by the appellant on the back of the deceased, was not found in the postmortem report. All these infirmities individually and cumulatively create a doubt as to whether PW1 was at all an eye-witness as claimed by the prosecution and the conviction cannot be based on the testimony of sole witness.

It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness

is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

The FIR was lodged by PW-1 in the present case who was not found to be an eye-witness by the High Court. Admittedly, FIR does not name Raja @ Perumal as an eye-witness. The FIR contains the name of Raja as an eye-witness. It has also come in evidence that the name of the elder brother of PW2 is also Raja and on this basis it is urged that it is this Raja who is the elder brother of PW-2, that has witnessed the occurrence but he was not examined by the prosecution. Therefore, the statement of PW-2 could not have been relied upon by the Court. From the evidence of Investigating Officer it reveals that immediately after the incident, I.O. reached the spot and prepared the inquest report \026 Exb.P13. The name of Raja @ Perumal is written in column no.3 as a witness which shows that immediately after the incident Raja @ Perumal has been referred as an eye-witness. During the course of investigation, the police also recorded the statement of Raja @ Perumal and not that of Raja who is the elder brother of PW-2. Upon careful reading of the statement of PW-2 it appears to us that he was present at the spot when the incident took place. It has come in his evidence that he has accompanied Murugan, the deceased from his place to the bus stop whereas the elder brother has left the house for his tuitions. We have no manner of doubt that it is PW-2 who has witnessed the occurrence. Accused nos. 2 and 3 were acquitted not because the statement of PW-2 was not relied upon but they were given benefit of doubt as their alleged acts were not mentioned in the FIR by PW-1. Apart from this, PW-2's statement that A-2 came to the bus stop and stared at the deceased and A-3 holding broom in her hand questioned him as to why he was running and asked him to stop when he was rushing towards the bus in no manner implicate those accused persons in commission of crime. The statement even if relied upon does not indicate that they instigated the accused-appellant to attack the deceased or to commit a crime. In the circumstance, discarding that portion of the evidence does not in any manner affect the veracity of the evidence of this witness as regards the accused appellant.

PW-2 while describing the incident, has deposed that A-1-appellant Seeman had inflicted injury on the neck of the deceased by patta knife and, thereafter caused cut on the right side of his head and further inflicted cut on the neck and that he has also inflicted injuries on the back. It is submitted by the learned counsel that no injury was found on the back of the deceased and, therefore, the medical evidence does not corroborate the statement of PW-2. It is to be noticed that the duration of the occurrence was short. The injuries on the deceased were inflicted with quick succession and it is too much to expect from a witness in such circumstance to narrate the exact injuries caused on a person of the deceased. The generalised statement as regards the injuries would be more credible than the particularized statement of location of injuries on the body when the injuries were caused in quick succession and in short time. Moreover, there is every possibility of the first injury being caused from the back side of the deceased. On scrutiny of the evidence of PW-2 and the medical evidence we are of the opinion that medical evidence corroborates the

statement of eye-witness, PW-2. Both, the sessions court and the High Court, after scrutiny of the evidence of PW-2 has relied upon the statement and we do not find discernible discrepancy in the evidence of PW-2 not to place reliance on his evidence. For the aforesaid reasons, the appeal fails and is dismissed.

JUDIS