(2007) 02 SC CK 0128

Supreme Court of India

Case No: Criminal Appeal No. 205 of 2007 (Arising out of SLP (Criminal) No. 4768 of 2006)

Jakki @ Selvaraj and Another		APPELLANT
	Vs	
State rep. by the IP, Coimbatore		RESPONDENT

Date of Decision: Feb. 14, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302

Citation: (2007) 2 ACR 1380 : (2007) CriLJ 1671 : (2007) 3 JT 344 : (2007) 3 KLT 117 : (2008) 2 LW(Cri) 988 : (2007) 3 SCALE 166 : (2007) 9 SCC 589 : (2007) 2 SCR 584

Hon'ble Judges: S. H. Kapadia, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: K.V. Viswanathan, B. Raghunath, Vijay Kumar and R. Nedumaran, for the Appellant; V. Kanakaraj S. Vallinayagam, S. Prabu Ramasubramanian and V.G. Pragasam, for the Respondent

Final Decision: Allowed

Judgement

Arijit Pasayat, J.
Leave granted.

2. Appellants call in question legality of the judgment rendered by a Division Bench of the Madras High Court upholding the conviction of the appellants for the offence punishable under Sections 148 and 302 of the Indian Penal Code, 1860 (in short the "IPC"), while setting aside conviction of four co-accused persons who had been convicted by the trial Court.

3. Prosecution version in a nutshell is as follows:

There was a difference between the six accused persons who belong to Hindu People Party on one hand and Suresh (hereinafter referred to as the "deceased") and witness

Ananthan (PW-1) who belong to Hindu Munnani Party. On account of this difference on 14.8.2001 Ananthan (PW-1) and some others had beaten up Senthil Kumar (A-3) and on 25.8.2001 said Ananthan (PW-1) and the deceased had restrained accused persons 1 to 5 from participating in the ritual competition of climbing a tree on Vinayargar Chaturti Function. On 30.8.2001, around 4.45 p.m. with an intention of killing Ananthan (PW-1) and the deceased, all the six accused persons unlawfully assembled at a particular place armed with dangerous weapons and assaulted the deceased. Accused Nos.1 and 2 i.e. present appellants called out Ananthan and chased him but he managed to escape. But that did not deter the appellants who attacked the deceased at around 5.00 p.m. in a garden and he lost his life because of the assaults. The investigation was taken up by the Police officers and on completion of investigation charge sheet was placed. The accused persons pleaded innocence and false implication and claimed to be tried.

4. In support of the prosecution version several witnesses were examined. The evidence of PWs 1, 2 and 13 was claimed to be of vital importance as they were described as eye witnesses. The trial Court found that PWs 1 and 2 resiled from the statements made by them during investigation. Relying on the evidence of PW-13 the conviction was recorded. A-1 to A-4 were convicted for offences punishable under Sections 148 and 302 IPC and A-5 to A-6 were convicted for offences punishable under Sections 147 and 302 IPC read with Section 149 IPC. All the six accused persons who were convicted preferred an appeal before the High Court which by the impugned judgment directed acquittal of four of the accused persons while confirming the conviction of A1 and A2. It was held that though the evidence of PW-13 was held to be not reliable so far as the same related to A-3 to A-6, the same was sufficient to fashion guilt on the accused appellants. It was held that his evidence was credible and cogent so far as these two accused persons are concerned.

5. In support of the appeal, learned Counsel for the appellants submitted that when the evidence of PW-13 was held to be unworthy of credence for the co-accused the same should not have been utilized for holding the appellants guilty. With reference to the evidence of PWs 1 and 2 who were stated to be the eye witnesses and who resiled from their statements during investigation, it was submitted that because of admitted differences and disputes the appellants have been falsely implicated.

Learned Counsel for the respondent-State supported the impugned judgment.

6. As noted above, stress was laid by the accused- appellants on the non-acceptance of evidence tendered by PW- 13 to contend about desirability to throw out the entire prosecution case. In essence the prayer is to apply the principle of "falsest in uno falsest in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the Court to convict

an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsest in uno falsest in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsest in uno falsest in omnibus" has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See 272464). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See 284836 . The doctrine is a dangerous one specially in India for if a whole body of the testimony was to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See 288858) and 273887 . An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See 278900 and 284200 . As observed by this Court in 265289 , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party"s case, material discrepancies do so. These aspects were highlighted in 287713 .

7. Applying the principles set out above, it is clear that even when the testimony of a witness is discarded in part vis-ï¿½-vis some other co-accused persons, that cannot per se be the reason to discard his evidence in toto. As rightly observed by the trial Court and

the High Court, the evidence of PW-13 has not been Shakened in any manner though he was cross examined at length. Additionally, the trial Court and the High Court have found that the evidence of the doctor (PW-4) clearly shows existence of injuries in the manner described by PW-13 by weapons allegedly held by the appellants. In that view of the matter, the judgment of the High Court does not suffer from any infirmity. The appeal fails and is dismissed.