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**Kartik Malhar Vs. State of Bihar**

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**Court** : Supreme Court of India

**Decided On :** Nov-15-1995

**Reported in** : 1996(1)ALD(Cri)73; 1996(1)BLJR655; 1996CriLJ889; 1995(4)Crimes516(SC); JT1995(8)SC425; 1995(6)SCALE400; (1996)1SCC614; [1995]Supp5SCR239

**Judge** : Kuldip Singh and; S. Saghir Ahmad, JJ.

**Acts** : Evidence Act, 1872 - Sections 134

**Appeal No.** : Criminal Appeal No. 1363 of 1995

**Appellant** : Kartik Malhar

**Respondent** : State of Bihar

**Advocate for Pet/Ap.** : Ram Nand Nath, Adv

**Prior history** : Appeal From the Judgment and Order dated 14-12-1990 of the Patna High Court in Crl. A. No. 305 of 1988(R)

**Judgement** :

**S. Saghir Ahmad, J.**

1. Leave granted.

2. The well-known maxim that 'Evidence has to be weighed and not counted' has been given statutory placement in Section 134 of the Evidence Act which provides as under:

134. No particular number of witness shall in any case be required for the proof of any fact.

3. This section marks a departure from the English law where a number of statutes still prohibit convictions for certain categories of offences on the testimony of a single witness. This difference was noticed by the Privy Council in Mohamed Sugal Esa Mamasah Rer Alalah v. The King A.I.R. (1946) P.C. 3 wherein it was laid down as under:

It was also submitted on behalf of the appellant that assuming the Unwarned evidence was admissible the court could not act upon it unless it was corroborated. In England, where provision has been made for the reception of Unwarned evidence from a child, it has always been provided that the evidence must be corroborated in some material particular(ly)? implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a court can act upon it; corroboration unless required by statute goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or Unwarned but, this is a rule of prudence and not of law.

4. The Privy Council decision was considered by this Court in Vadivelu Tlievar v. Tire State of Madras : 1957 CriLJ1000 in which it was observed as under : -

On a consideration of the relevant authorities and the provisions of the Evidence Act. the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness out ways the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon for example, in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogues character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this a much depends upon the judicial discretion of the Judge before whom the case comes.

In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that no particular number of witnesses shall, in any case, be required for the proof of any fact. The Legislature determined, as long ago as 1872 presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses.

This Court further observed as under:

It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilty depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each cases and the quality of the evidence of the single witness whose testimony has to be either 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. Even as the guilt of an accused may be proved by the testimony of a single witness, the innocence of the accused person may be established on the testimony of the single witness, even though a considerable number of witnesses may be forth coming to testify to the truth of the case for the prosecution. Hence,

in our opinion, it is a sound and well-established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact, Generally speaking, oral testimony in this context may be classified into three categories.

namely:

(1) wholly reliable:

(2) wholly unreliable:

(3) neither wholly reliable nor wholly unreliable.

In the first category of proof, the Court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above approach of suspicion of interestedness, incompetence of subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is Faceable and free from all taints which tend to render oral testimony open to the suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution.

5. The above decision has since been followed in Ramratan and Ors. v. The State of Rajasthan : [1962]3SCR590 ; Guli Chand and Ors. v. State of Rajasthan : 1974 CriLJ331 ; Badri v. State of Rajasthan : 1976 CriLJ496 ; Vanula Bhushan @ Venuna Krishnan v. State of Tamil Nadu : AIR 1989 SC236 and in Jagdish Prasad

v. State of M.P. : 1994 CriLJ1106 .

6. Some other cases of this Court in which the question of sole witness constituting the basis of conviction or otherwise has been considered are State of Haryana v. Manoj Kumar : 1993 CriLJ3839 ; Brij Basi Lal v. State of M.P. [1991] Suppl. 1 SCC 200; Jai Prakash v. State, Delhi Administration : 1991 CriLJ1370 ; Peadireddi Subbareddi v. State of Andhra Pradesh : 1991 CriLJ1391a ; Java Ram Shiva Tagore v. State of Maharashtra : 1991 CriLJ2192 ; Anil Pukhan v. State of Assam : 1993 CriLJ1796 and Ram Kumar v. State of U.P. : 1992 CriLJ2421 .

7. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelyu Thevar's case (supra) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence.

8. Let us now turn to the instant case of which the facts have been set out by the High Court in its judgment dated December 14, 1990 which indicate that Genua Malhar (co-accused) was father-in-law of the informant, namely, Marhu Malhar (PW1) while Kartaik Malhar, who is the appellant before us, and Barju Malhar (another co-accused) were his brothers-in-law and sons of Genua Malhar who also had a daughter, namely, Rajo Bala Devi (PW6), married, incidentally to the informant. Marhu Malhar whose sister, namely, Lalmani Devi is married to Barju Malhar, Lalmani Devi had, allegedly deserted Barju Malhar and was living with his brother, Marhu Malhar (PW1) with whom Barju Malhar would, often, pick up quarrel and threaten them with dire consequence.

9. On 1.10.1987, at about 6.00 P.M., a stranger came to the house of Marhu Malhar (PW1) and inquired from his brother, Banoran Malhar, about the whereabouts of one Sukhdeo but his brother pleaded ignorance. The stranger thereafter went to the house of Barju Malhar but soon came back and fell the

deceased (Bahoran Malhar) down which was seriously objected to by deceased's wife, Fulmani (PW2). It was then that Kartik Malhar went back to his house and suddenly came again at the spot with a 'Pharsa' in his hand. He gave 'Pharsa' blows on the hand and left scabula of Banoran Malhar, who sustained grievous injuries and died on the spot. At the time of assault, Genua Malhar and Barju Malhar were also present on the spot and were, allegedly, all the time, instigating Kartik Malhar.

10. Three persons, namely, Genua Malhar, Kartik Malhar (appellant) and Barju Malhar were challaned on the report lodged by. Marhu Malhar (PW1) at 10.00 P.M. on 1.10.1987 at P.S. Bundu. This report was lodged by Marhu Malhar in the present of his wife, Rajo Bala Devi (PW6) and the widow of the deceased, namely, Fulmani (PW2), as both the ladies had gone to the police station with Marhu Malhar.

11. Three eye witnesses were produced by the prosecution at the trial but two of them, namely. Marhu Malhar (PW1) and his wife, Rajo Bala Devi (PW6) turned hostile with the result that the prosecution was left with only one eye witness, namely, Smt. Fulmani, wife of the deceased in support of its case.

12. The Trial Court (Sessions Judge, Ranchi) and the High Court both, on a scrutiny of the evidence recorded at the trial, came to the conclusion that PW1. Marhu Malhar and his wife, Rajo Bala Devi (PW6), were closely related to all the three accused, including the appellant, and in order to protect, them, they had deliberately turned hostile. In this process, two of the accused, namely, Genua Malhar and Barju Malhar were acquitted but the appellant was convicted under Section 302. IPC and sentenced to life imprisonment as the Sessions Judge as also the High Court were of the view that the evidence of Fulmani (PW2) clearly established that the appellant had given 'Pharsa' blows to the deceased on his head and scapular region which resulted in his death at the spot. The basis of conviction was thus the statement of Fulmani, wife of the deceased.

13. Learned Counsel for the appellant has strenuously contended that in the particular facts and circumstances of the case, it was not open to the Sessions Judge or the High Court to rely upon the statement of Fulmani (PW2) so as to

convict the appellant for the offence under Section 302, IPC. It is also contended that since two of the eye witnesses had turned hostile, it would not be safe to maintain the conviction on the statement of Fulmani (PW2) alone as she was the widow of the deceased and was, consequently, a highly interested witness.

14. We have already discussed above that it is open to the Courts to record a conviction on the basis of the statement of a single witness provided the evidence of that witness is reliable, unshaken and consistent with the case of the prosecution. The case of the prosecution cannot be discarded merely on the ground that it was sought to be proved by only one eye witness, nor can it be insisted that the corroboration of the statement of that witness was necessary by other eye-witnesses. The instant case, it may be pointed out, does not strictly fall within the category of those cases where only one witness is present and the case of the prosecution is sought to be proved by the statement of that witness alone. Here, three of the witnesses were produced but two of them turned hostile leaving the third alone and, therefore, on the principles already discussed, if the remaining eye witness is found to be trustworthy, it becomes the duty of the Court to convict the accused as observed by this Court in Vadivelu Thevar's quoted below:

But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.

15. As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In Mst. Dalbir Kaur and Ors. v. State of Punjab : 1977 CriLJ273 , it has been observed as under:

Moreover a clause relative who is a very natural witness cannot be regarded as an interested, witness. The term 'interested postulates that the person concerned

must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here.

16. In Dalip Singh v. State of Punjab : [1954]1SCR145 . It has laid down as under:

A witness is normally to be considered independent unless he or she springs from sources which arc likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship for from being a foundation is often a sure guarantee of truth. However, we are not any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often but forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

17. This decision has since been followed in Guli Chand and Ors. v. State of Rajasthan : 1974 CriLJ331 in which Vadevelu Thevar's case (supra) was also relied upon.

18. We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh's case (supra) in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., the Court observed:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. If it is

grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan : 1952 CriLJ547 : : 1952 CriLJ547 . We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

19. In this case, this Court further observed as under:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

20. Again, in Masalti v. State of U.P. : [1964]8SCR133 , this Court observed:

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.... The machanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

21. To the same effect is the decision of this Court in State of Punjab v. Jagir Singh : 1973 CriLJ1589 .

22. The High Court and the Sessions Judge both have considered all the circumstances of the case and have come to the conclusion that Fulmani was present at the spot from the very beginning and had seen the whole of the incident. She was also found to have accompanied the informant. Marhu Malhar (PW1), to the police station where the report was lodged in her presence. She was the first to object to the beating of her husband in the first round. She also noticed

that the appellant went back to his house and came again at the spot with a 'Pharsa' by which he gave the fatal blows to the deceased. Though two of the alleged eye- witnesses had turned hostile, her statement was fully corroborated by other circumstances of the case including the medical evidence.

23. The appeal, in our opinion, lacks merit and is consequently dismissed.

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