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In Re: Narayanaswami

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Court : Chennai

Decided On : Aug-30-1971

Reported in : 1973CriLJ1295

Judge : Ramamurti and ; Krishnaswamy Reddy, JJ.

Appellant : In Re: Narayanaswami

Judgement :

Ramamurti, J.

1. This referred trial and criminal appeal arise out of the judgment of the learned Sessions Judse of East Thanjavur, who found the two appellants (accused 1 and 2) guilty of the offence of murder under Section 302 I. P- C. and sentenced the first accused to the extreme penalty of law subject to confirmation by this court and the second accused to imprisonment for life. Accused 3 to 5 were also charged for the offence of constructive liability for murder under Section 302 read with Section 149 IPC and they were acquitted. All the accused were charged for rioting under Section 148 I. P. C, but they were all acquitted of that charge. The main charge against the accused is that on 29-10-1970 at about 7-30 p.m. the deceased Palani-velu was murdered by the party of the accused. Accused 1 and 2 are brothers. The third accused is the son of the second accused. The fourth accused is the nephew (son of the sister) of accused 1 and 2 and the fifth accused is the son of the first accused's brother-in-law. Thus members of one family arp involved

in the case.

2. The case of the Prosecution as regards the motive is ill-feelings arising out of recent Panchavat election held in July 1970, at Veppancheri which is a hamlet of Keeza Pandi Vattam. the village of the party of the deceased. At that election one Selvam son of the first accused and one Kanagasundaram son of the brother-in-law of the first accused contested the elections supported by the Congress party. They were opposed by one Ramaswami Thevar supported by the D. M. K. party. The party of the accused were sympathisers of the Congress party while the deceased Palanivelu was a sympathiser of the D. M. K. partv and worked for the D. M. K- partv which ultimately succeeded in the elections. Palanivelu was responsible for the success of the candidates and conseauently, the case for the prosecution is, that ill-feelings arose between the party of the accused and the deceased Palanivelu. It is true that the prosecution has relied upon this election dispute as the motivp for the murder, but, even at the threshold we may sav, that wp are not satisfied that that is the real motive. The main case for the occurrence (if at all there was one) was a auarrel and some sudden outburst, i. e .there must have been some auarrel on the dav of the occurrence, whoever may be the parties thereto.

3. The case of the prosecution is that on the day of the occurrence 29-10-1970, a day after the Deepavali. at 6-30 p. m. PW. 1. Dakshinamurthi, one Muru-gesan, the deceased Palanivelu and others were hearing news on the Radio at the panchayat Board Office, that the first accused came there wj.th a cane abusing Veppan-cheri villagers in general- At that time accused 3 and 4 and the son of the first accused were also hearing the radio, that on seeing the first accused, the deceased made certain cvnical and sarcastic remarks humiliating the first accused, that PW. 1 and Muruaesan laughed eniovin? the fun at the sarcastic observations of the deceased and that the fourth accused who did ndf relish this warned the deceased saving that the partv of the deceased could see for themselves as to what would happen in a short time thereafter. The first accused left the Dlace in anger.

The further case of the prosecution is that at about 7-30 p. m. P W- 1 and Pala-nivelu, the deceased, after hearinp the news on the radio at the Panchavat Board office were proceeding towards their house in Veepancheri and that when thev were iust opposite to the house of one Kalavan-sundara Thevar, P. W. 4 the partv of the deceased saw all the five accused coming from the opposite direction, accused 1 to 4 ;|ach armed with a bitchuwa knife the fifth accused with a vel stick, that on seeing the deceased Palanivelu the first accused observed: 'Here comes Patta-maniagars son; everything would be alright if, he is finished: stab him', that immediately the second accused stabbed the deceased with bichuva on his right wrist, the first accused stabbed the deceased with a bichuva below the left shoulder, the second accused again stabbed the deceased on his back on the left side, that the deceased and P. W. 1 raised alarm, that P. W. 2 one Vaithilineam raised an alarm, that on hearing the alarm P. Ws. 3 to 7 Carrie to the scene of occurrence, _ that thev also saw accused 1 and 2 inflicting injuries on Palanivelu assisted by accused 3 to 5. On receipt of the stabs from the first accused Palanivelu fell down, blood gushed out of the injuries and all the accused ran to the east with the weapons in their hands.

The case of the prosecution is that apart from P. Ws. 1 and 2, P. Ws- 3 to 7 also witnessed the occurrence in the sense thev saw' the last stab inflicted by the first accused on the deceased on the left shoulder blade as a result of which Palanivelu the deceased fell down. All the witnesses P. Ws. 1 to 7 saw all the accused running towards east with their weapons. The wounds on Palanivelu werp bandaged by persons present there and he was taken to the main road for being sent to Government Hospital, Thiruthuraipoondi by bus. At the time of the occurrence Palani-velu's father, Muthukannu Thevar. P. W. 8. was worshipping in the Pilliar temple in the Thiruthuraipoondi main road P. W. 7 came running and informed P. W- 8 about the occurrence. P. W. 8 on hearing the news got stunned, came to the bus stand, but as there was no accommodation in the bus he did not accompany the partv with P. W. 1 in the bus to Thiruthuraipoondi. At 8-20 p.m. P. W. 9 the doctor in the hospital examined the iniured and gave the wound certificate Ex. P. 10. He also sent the accident memo Ex. P. 3 to the police and a reaui-sition to the Sub Magistrate to record a dying declaration. Ex. P. 3 the accident memo was received by P. W. 10, the Head Constable, who after making

a general diary entrv went to the hospital and recorded the statement Ex. P. 4 from Palanivelu. It was attested by P- W. 14. P. W. 10 returned to the station and registered the F. I. R. as crime No. 444 of 1970. The deceased was sent to R. M. Hospital, Taniore which he reached at 1-40 a.m- and on the earlv morninc? of 30-10-1970 at 3 a. m. intimation was sent to P. W. 13. the Sub Magistrate and he came to the hospital and recorded Ex. P. 9, the dying declaration from the deceased. As the occurrence took place within the limits of Muthupet police station, the F. I. R. Ex. P 4 was transferred to that station. The doctor at Thaniavur hospital, P. W. 15 performed an operation on the deceased but it was not a success and the deceased succumbed to the iniuries.

4. Even at 6-30 a.m. on 30-10-1970, P. W. 11, the Head Constable of Muthupet station registered a case in crime No. 444 of 1970 and he visited the scene at 8 a. m. prepared observation mahazar Ex. P. 5, attested by P. W. 12 and at 8-30 a. m. recovered bloodstained earth M. O. 6 under Mahazar Ex. P. 6 attested by P. W. 12. He also examined P. Ws. 1 to 4. 8 and others. by 9-30 a. m. on receipt of intimation of Palanivelu's death he altered the crime into one of an offence under Section 302 IPC He went to Thaniavur with P. Ws, 1, 2 and 8 and handed over the F. I. R. to the Inspector. P. W. 21. The Inspector P. W. 21 held inquest between 11 a.mrand 5 p.m. and examined P- Ws. 1. 2 8 and others. Ex. P. 18 is the inauest report He recovered M. Os. 2 to 5, clothes of the deceased under Ex. P. 7 attested by P W. 12. He also examined P. Ws. 5, 6. 7. 11 and others and prepared a roueh sketch Ex. P. 19.

5. P. W. 16. Assistant Professor of Forensic Medicines conducted autopsy on the dead body of Palanivelu between 3-05 p. m. and 4-20 p. m. and noticed 9 iniuries as described by him in his Post-mortem certificate Ex. P. 11. According to the doctor the iniurv on the left shoulder of Palanivelu i.e. injury No. 6 is necessarily fatal. The Inspector, P. W. 21' arrested the first accused on 9-11-1970 and on information furnished by the first accused the weapon M. O. 1 was recovered in the presence of P. W- 9. On the same dav accused 2 to o surrendered. The charge sheet was filed on 18-12-1970.

6. In their statements under Section 342 Cr IPC accused 1 and 2 have referred to several circumstances showing pronounced enmity between the partv of the deceased including some of the witnesses on the side of the prosecution and the Partv of the accused, as the motive for the accused being falselv implicated in the case. Thev had also filed some documents to show the strained relationship between the parties. Thev denied that thev had anything to do with the occurrence.

7. In the course of the trial, the prosecution adduced evidence to implicate all the five accused to the effect that accused 3 to 5 assisted accused 1 and 2. The learned Sessions Judge was not impressed with the case of the prosecution so far as accused 3 to 5 were concerned. There was no reference to accused 3 to 5 in the first statement, the dvins declaration of the deceased. Ex. P. 4, and even in the second dying declaration Ex. P. 9, there is no reference to the fifth accused at all. Further in Ex- P. 9, the reference to accused 3 and 4 is very halting and non-committal the deceased had stated in Ex. P. 9 that accused 3 and 4 were present on the scene each having a bichuwa, but that the deceased did not know what part thev plaved in the occurrence. In view of this obvious later development in the case of the prosecution in the implication of accused 3 to 5 and the other infirmities in the case, the learned Sessions Judge took the view that it would be wholly unsafe to convict accused 3 to 5 and giving them the benefit of doubt, acauitted them. the case that ultimately survived for consideration was whether the prosecution has established the guilt of accused 1 and 2. bevond reasonable doubt.

8. P. Ws. 3 to 7 are all Thevars to which the party of the deceased belonged. Their names did not find a place in the two dying declarations of the deceased. Exs. P. 4 and P. 9. Some of them on their own showing are chance witnesses. Their evidence may be of some value only if the prosecution is able to make headway on the basis of Exs. P. 4 and P. 9 and the evidence of the two, eve witnesses P. Ws. 1' and 2 who claim to have personal direct knowledge of the entire episode right from the commencement till Palanivelu ultimately fell down after receiving the fatal iniquiry. In other words, if the case of the prosecution is not established bevond reasonable doubt with reference to Exs. P. 4 and P. 9 and the evidence of

P. Ws. 1 and 2, the evidence of P. Ws. 3 to 7. the so-called eye witnesses, would not avail the Prosecution much: if, on the other hand Exs. P. 4 and P. 9 and the evidence of P. Ws. 1 and 2 bring home the guilt of the accused. P. Ws. 3 to 7 undoubtedly can be relied upon as corroborating the story of the prosecution. The proper scrutiny and assessment of the evidence of P. Ws. 3 to 7 therefore depends unon what impression wp form on the two dying declarations. Exs. P. 4 and P. 9 and the evidence of the two eve witnesses, p. Ws. 1' and 2. We shall, therefore, takp up the latter aspect for consideration Ex. P. 4 which was given by Palanivelu at Thiruthuraipoondi Government Hospital at 10 p.m. on 29-10-1970 rendered in English is in these terms:

After hearing the news in the Pan-chayat Board office, I was returning at 7-30 p. m- Behind me one Dakshinamurthi (P. W. 1) and another person came. I do not know the name of that another person. In the South Street bevond the compound and the corner Naravanaswami Thevar (A. 1) and Pasupathi (A. 2) came opposite to me. Naravanaswami. with the knife which he had in his hand cut me on the left shoulder and the left arm. Pasupathi cut me in the wrist and also on the shoulder, I fell down. I felt somebody was lifting. Then I did not know what happened. While going in the bus I regained consciousness. I havp now given this statement in writing whilp I am in my full senses. The doctor gave me treatment in the hospital. The state-; ment was read over to me. I read the statement myself. The statement was as stated by me. Election motive.

Sd. Palanivelu.

Patient is conscious

Sd... 29-10-1970 10-50 p.m.

Recorded by me.

Sd. K. Mahalingam. H. C. 1213-

The next dying declaration which was recorded in the.Thaniavur hospital in the early morning at 3-30 a.m. on 30-10-1970 is as follows:

Statement of Palanivelu: my name is Palanivelu. I went to Panchavat Board office from by house in Veppanchery and listened to Radio news. After the news, I returned home. It would be about 8 p.m. Naravanaswami (A. 1) cut me on the left side near the shoulder with a knife. Naravanaswami is Veerappt Thevar's son. Along with him. his brother Pasupathi (A- 2) was there. At that time Pasupathi cut me on the right hand with the knife he was having. Naravanaswami (A. 1) stabbed me forcibly. Pasupathi (A. 2) stabbed on the right hand near the serious wound on the left side. I am reading in the College. On account of election motive and enmitv with my father, I was stabbed- Alone with them Kannavao son of Pasupathi (A. 3) Veera-sekaran son of Siyaraia Pillai (A. 4) were also there with knife. I do not know what they did. I fell down unconscious. I regained consciousness in the hospital.

Sd. M. Palanivelu

Taken down by me read over to the deponent and admitted by him correctly recorded and signed in the statement.

Sd...

30-10-1970 at 3-40 a.m.

Patient is alive and conscious (Palanivelu)

Sd... 30-10-1970 Asst...

9. In case in which there is a single dying declaration and also oral evidence, one corroborating the other the problem before the court may not be very difficult of solution, though there may be somp embellishments and discrepancies brought out in the oral evidence, because due weight Will have to be given to the statement of the deceased as to the real circumstances under which he met with his death and in the light thereof, the oral evidence will have to be assessed making due allowance for discrepancies and inaccuracies. Complete and perfect harmony between the dyins declaration and the oral evidence cannot always be secured. Problems would arise where the deceased has made two or more statements constituting dying declarations as to the circumstances under which he

met with his death. Here too, immaterial discrepancies and inconsequential inaccuracies between one statement and another will have to be ignored as of no consequence, if the main core of the case is found in the dying declaration of the deceased. Plurality of statements does not matter; the court must be convinced that,, the deceased had made both the statements voluntarily, of his own accord without any tutoring and therp is no intrinsic evidence of obvious development in the subseauent dying declaration in the case so as to falsely implicate persons adding their names as persons present with or without attributing specific overt acts. If the latter statement bears convincing evidencp of deliberate embellishments and developments falsely implicating fresh parties, it is clear that interested parties have effectively come up on the scene, that the deceased was not giving his own version but was merely a tool in the hands of other people the deceased quite willing to sav whatever he had been tutored. The presumption that what a dying man says would bp safely taken as true, no longer applies and the proba- tive value of such a statement is very little. The fact that the second dying declaration is a tutored or inspired one will necessarily have an important bearing on the auestion whether the first dying declaration is a free and voluntary one especially when at the same timp the two dying declarations were made by the deceased, his near relatives and partisan friends were surrounding the deceased.

We are of the view that Ex. P. 9 is not a free and voluntary statement of the deceased and the language thereof bears ample intrinsic, evidence of developments in the version of the deceased. There is a distinct statement in Ex. P- 9 that the accused stabbed dup to election motive and on account of the enmitv against his father. The names of accused 3 and 4 are introduced in a clever manner deli-beratelv planned so as to give room for development in the course of the trial. In Ex. P. 4. specific overt acts have been attributed to accused 1 and 2. The scheme underlying P. 9 is that specific overt acts are to be attributed to accused 3 and 4 in the later stages of investigation and trial consistent with the post-mortem certificate disclosing the nature of the iniuries. That is the reason why in Ex. P. 9 the deceased said that he did not know the precise parts played by accused 3 and 4 in the course of the occurrence though he would allege that accused 3 and 4 came armed with deadly weapons. If the . others had merelv stood by watching the whole incident and protecting accused 1 and 2 it would

have been easier to state so in Ex. 9, though, that is the evidence, now adduced in the course of the trial. The statement that the deceased was not aware as to what parts were played by accused 3 and 4 in the transaction has been made after- very careful deliberation to shape the casP in the course of the investigation and at the time of the trial either by attracting Section 34 or 149 or 149 IPC, or even attributing specific overt acts to them referable to iniuries other than those referable to accused 1 and 2. In all probability. Ex. P. 4 was given based upon suspicion and later accused 3 and 4 were implicated for fear that the case may fail as against accused 1 and 2 for want of proof and in that event accused 3 and 4 at least could be convicted, it is unnecessary to speculate as to whv accused 3 and 4 were introduced in Ex- P. 9 what is crucial is to notice that the second dying declaration is not a voluntary statement of the deceased but it is something clearly tutored. We are not inclined to attach any value to Ex. P. 9 which raises serious reasonable doubt in our minds about the guilt of the accused.

10. The question next arises as to how far Ex. P- 4 as a dying declaration supports the case of the prosecution. After a close scrutiny of the evidence as to the persons who were present at the time when Ex. P. 4 was given and in the light of the intrinsic .evidence by Ex. P. 4, we entertain serious doubts and we are of the view that Ex. P. 4 too is a tutored of inspired dying declaration. the reliability of the dying declaration should be subiected to careful scrutiny inasmuch as it is made in the absencp of the accused and the accused had no opportunity to test its varacitv by cross-examining the person who made the declaration, as such person is dead. The dvinp declaration is a very weak piece of evidence if a material integral portion of the version of the entire occurrence is untrue or where the dying declaration is deliberately worded as to give scope to the Drosecution to> develop thereafter i.e. where the statement of the deceased is designedly dubious and deliberately he avoids committing himself to any definite statement. If facts or links in the Drosecution which would have been obviously in the mind of the deceased have not been so stated but mentioned in a vasue and loose manner, that again is a strong circumstance which would make the dying declaration unsafe to act upon. In Ex. P. 4 it is stated that the occurrence is known to Dakshinamurthi. P. W. 1 and some other person but that the deceased did not know the name of the latter. Mr- Vanamamalai. learned Counsel for the appellants, nlaced considerable stress

upon the careful well-thought out language employed in Ex. P. 4 tending to the inference that such language was employed by the deceased as a tutored witness, all the while the interested parties having in mind how evidence could be secured and the case shaped in the stage of investigation and trial. If the deceased were to statp that he could not 'identify' the second eve witness to the occurrence, the entire case of the prosecution would fail for difficulty of identification because if the deceased were to admit that he could not identify the actual evp witnesses present he could not have identified even the assailants. That is the reason whv the deceased was particular to avoid any reference to identification but to merely mention that he did not know the name of that second eve witness.

11. In the course of the evidence P- W. 2 Vaithilingam. a Hariian farm servant and also doing menial work in the house of the deceased is put forward as the person in the mind of the deceased when he gave the statement, Ex. P. 4. In the course of the cross-examination of P. W. 2, the defence has established beyond any shadow of doubt that P. W- 2 is very well known to the family of the deceased that P. W. 2 has worked on numerous occasions as a farm servant under P. W. 8, the father of the deceased, that P. W. 2 knows all the members (male and female) of the deceased's family and that he knew the deceased very well in particular. P. W. 2 has also admitted that on numerous occasions he had spoken to the deceased when P. W. 2 was doing work in the house of the deceased. Indeed the cross-examination to establish that P. W. 2 is not some stranger to the deceased and the members of his family but a person very well known and moving with them very closely, has been very detailed and searching. From this it is auite obvious that when the deceased referred to another evp witness besides P. W, 1 he could not possibly have had in mind. Vaithilinpam P. W- 2. Otherwise it is unimaginable whv the deceased not only did not refer to the eve witness P. W. 2 by name but stated that he (deceased) did not know the name of the second eve witness. The position would be different if the prosecution had examined some third partv stranger as the second eve witness to the occurrence referablp to the one mentioned in Ex. P. 4- The problem then would be whether such a person put forward as a second eye witness was reallv an eve witness at all. By examining Vaithilingam P. W. 2, the second eve witness referable to Ex- P. 4, the falsity of the case of the prosecution has been completely exposed in two crucial ways (1) P. W. 2 was not an eve

witness at all and (2) the statement in Ex. P. 4 leaving the name blank is not something due to accident but due to careful deliberation. It is in this context that Mr. Vanamamalai urged with force that so long as the Drosecution had not examined the second eye witness as a person whose name the deceased did not know and therefore could not refer to him by name, the inference is irresistible that Ex. P. 4 is an inspired and tutored dying declaration and the parties concerned all the while were thinking only, in terms of a prosecution, the trial and the evidence in the case.

In paragraph 15 of the iudgment, where the learned Sessions Judge has dealt with this matter he has held that the reason for the deceased not mentioning the name of P- W. 2 in Ex. P. 4 may be due to the fact that the deceased was unable to identify PW. 2. It is a complete misapprehension of the position. If the Judge meant to hold that therP was difficulty in identification the case for the prosecution should have been thrown out on that short ground, because what applies to a witness would apply to the assailant,. The result of this discussion is that the second dvins declaration Ex. P. 9 is an inspired and tutored one and in that background when Ex. P- 4 the first dying declaration is considered, that again suffers under the same infirmity. In other words this case does not admit of a separate treatment in the sense that the later dvins declaration may be thrown awav as containing untrue statements and embellishments and the first dvine declaration acted uoon as a true statement. Ex. P. 4 does not inspire any such confidence. Indeed we are of the view that right from the time the deceased was carried to the hospital, whether it was to the Thiruthurapoondi hospital or Thaniavur hospital he was surrounded by his near relatives and friends and the version that he had given is influenced and coloured by what other peaple dinned into his ears as well as his own ideas to implicate persons against whom he had suspicion on account of the pronounced enmitv between his familv and those persons,

12. We have so far explained how it is not safe to relv upon Exs. P. 4 and P. 9 as dying declaration in view of the inherent infirmities therein. We shall now examine whether the oral evidence cures those infirmities in any manner satisfactorily explaining the gaps therein bringing home the guilt of the accused beyond

reasonable doubt. We have not the slightest hesitation in saving that the oral evidence is unreliable, unconvincing that at every stage the attempt of the prosecution is to suppress truth-

(After dealing with the evidence, His Lordship proceeded)

On a general survev of the entire oral evidence we have formed the impression that the witnesses are all tutored witnesses and have been repeating parrot like the same storv. It is true that at the scene of occurrence there was the street tube light with which the assailants could be easily identified, but the difficult problem raising serious doubts in our minds arises when as manv as five persons all members of one familv are implicated invoking Sections 148 and 149 IPC the storv of the prosecution is full of falsehood, embellishment and artificialities. We find it impossible to safelv carve out any portion of the case as having been established as against any of the accused bevond reasonable doubt. As observed already the deceased himself has siven two dying declarations and the facts prove that he was not a free agent and was suite prepared to introduce falsehood in an integral and substantial portion of the case. 13. It will be relevant at this stage to refer to the decision of the Supreme Court in T. Pomoiah v. State of Mysore : 1965 CriLJ31 which contains a note of warning that if there are two dying declarations and the court reiects the later dving declaration as containing untruth and embellishments implicating further persons as responsible for the crime, the court sheuld not readi-lv accept and act upon the first dving declaration as establishing at least the guilt of the persons mentioned in the first dying declaration bevond reasonable doubt. This important note of warning is based upon the underlying principle that when the deceased implicates more people than the trup assailants, the deceased has proved himself to be capable of uttering serious untruth in a substantial integral portion of the case and that it would be unsafe to base a conviction upon the statement ef such a person. In that case : 1965 CriLJ31 the deceased Eranna who was murdered gave threp dying declarations marked as Exs. P. 2, P. 1 (a) and P. 9 (Note: The point for decision turned upon the probative value of the two dying declarations Exs. P. 2 & P. 9). In the first dying declaration Ex. P. 2. the deceased implicated one Pompiah and Hussaini as the real assailants, but in the second dving declaration Ex. P- 9 which was given a few

hours later he implicated two more persons Siddaiah and Rudramani. The High Court was not inclined to act upon the second dving declaration, Ex. P. 9 and therefor found only the two accused Pompiah and Hussaini, guiltv of the offence charged. On appeal by these two persons, the Supreme Court acauitted them- the Supreme Court distinguished the earlier decision of the Supreme Court in Khusal Rao v. State of Bombav : 1958 CriLJ106 in which case there was a plurality of dying declarations on the ground that no part of the dving declarations has been found to be false and the court had no reason to doubt the truth of the dying declarations and their reliability. The Supreme Court observed as follows:

In the instant case, the declarations recorded in Exs. P. 2 and P. 1 (a) were made almost simultaneously and the declaration recorded in Ex- P. 9 was made shortly thereafter. In Ex P. 2 Err anna named Pompiah and Hussaini only as his assailants, whereas in Ex. P. 1 (a) and Ex. P- 9 he named not only Pompiah and Hussaini but also Siddaiah and Rudramani as his assailants. Now, his versien that Siddaiah and Rudramani attacked him has been found to be an afterthought. We thus find that a material and integral portion of the deceased's version of the entire occurrence is unreliable. The truthfulness of the dving declaration as a whole is not free from doubt- The prosecution case as a whole does not inspire confidence. The prosecution produced eve witnesses, who have been found to be unreliable.

14. Thus it will be seen that the crucial test in all cases of Plurality of dying declarations is whether the deceased's version is proved to be false in respect of an integral portion of the case and that the test whether the deceased has given a true version is not to be iudged with reference to any one dying declaration but it should be iudged in the light of the several declarations made by him. It is only in extreme cases that the court can safely convict reiving upon the first dvine declaration provided there is convincing and adeauate corroborative evidence. In the instant case, the preceding discussion will explain how the corroborative evidence is unreliable and worthless. For all these reasons, the conviction and sentencp imposed on both the accused 1 and 2 are set aside and thev are directed to be set at liberty forthwith. The appeal is allowed.

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