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ARUMUGAM

v.

STATE REP. BY INSP. OF POLICE
(Criminal Appeal No. 879 of 2010)

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JULY 24, 2012

**[SWATANTER KUMAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

*Penal Code, 1860 - ss. 147, 148, 341 and 302 -
C Prosecution under - Of six accused - Three eye-witnesses -
Two of them turning hostile - Conviction of two of the accused
- High Court acquitting one of the convicted accused while
confirming conviction of appellant-accused - On appeal, held:
D Conviction justified - Evidence of sole eye-witness was
reliable - Delay in registering the FIR did not cause any
serious dent in the prosecution case - The case of the
prosecution that fatal injuries were caused by appellant-
accused was supported by medical evidence and the ocular
evidence of the eye-witness - The appellant-accused cannot
E be treated at par with the other accused - In view of the fact
that deceased was assaulted by the accused even prior to the
incident s. 304 (Part-II) is not applicable - There is no scope
to alter the sentence.*

**The appellant-accused was prosecuted with five
F other accused for having caused death of one person.
The prosecution case was that the accused persons
assaulted the victim with the weapons called 'aruval'.
PWs 1 to 3 were the eye-witnesses to the incident. PW-1
took the victim to the hospital. The victim informed the
G doctor (PW 8) who had examined him that he was
assaulted by six known persons. The victim died in the
hospital. Case was registered u/ss. 147, 148, 341 and 302
IPC. Prosecution case was also that the accused had
assaulted the deceased twelve days prior to the incident**

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when the deceased had escaped. During trial, the eye-witnesses PWs 2 and 3 turned hostile. Trial court convicted appellant-accused and accused No. 6 and acquitted rest of the accused. High Court confirmed the conviction of the appellant-accused, while setting aside the conviction of accused No. 6.

In appeal to this court, appellant-accused contended that his conviction was not justified on the grounds there was delay in preferring the complaint and registration of FIR; that the injuries Nos. 4 and 5 which were fatal for the deceased, according to the doctor (PW 11), who had conducted post mortem, were not attributed to appellant-accused; that appellant was required to be treated at par with the acquitted accused; and that even if the prosecution case is accepted, the case would fall u/s. 304 (Part II) IPC.

Dismissing the appeal, the Court

HELD: 1. The appeal does not merit any consideration. It is true that the whole case depends on the evidence of PW-1, the sole eye-witness to the occurrence. It is also true that he is the brother of the deceased. It was not argued before this Court that since he is the brother of the deceased, his version is liable to be thrown out. [Para 7] [1033-F]

Jaisy @ Jayaseelan v. State Rep. by Inspector of Police 2012 (1) SCC 529; Sucha Singh and Anr. v. State of Punjab 2003 (7) SCC 643; 2003 (2) Suppl. SCR 35 - relied on.

2. Delay in registering the FIR does not cause any serious dent in the case of the prosecution. The trial Court dealt with this aspect in a detailed manner. Since the deceased was in a serious condition, it was quite apparent that PW-1 as his brother had to stay along with him in the hospital and as was expected, despite the

A treatment given to the deceased, he died in the hospital around 2 O'Clock. The only other person who was available with him was his mother (PW-4). Having regard to the unfortunate occurrence to his deceased brother, he would have only concentrated in staying at the hospital to support his mother and for taking required other steps to deal with the dead body of the deceased. Noting the sequence of events, from the time of the occurrence till the registration of the FIR, there is no substance in the plea of the appellant that there was delay in the registration of the FIR. [Para 8] [1034-F-H; 1035-B-D]

3. It is not borne out by records that there was no evidence to connect the appellant to any of the injuries sustained by the deceased. The No. 1 injury as described by PW-8 the doctor who attended on the deceased immediately after his admission to the hospital, was mentioned as an incised wound measuring 10 x 5 cm x bone deep over dorsal aspect of left elbow exposing elbow joint". The post mortem doctor PW-11 in his evidence while describing the said injury, made it clear that the tissues, the blood vessels, the nerves and the bones were completely cut and the front forearm was just hanging with the attached skin. PW-11, the post mortem doctor in his opinion made it clear that the death of the deceased was caused by injury Nos.4 and 5. As far as the said injury was concerned, it was reported by PW-1 that while A-2 held the deceased, A-1 caused a cut injury on the left elbow of the deceased. Before the Court also, PW-1 reiterated the said version as against the appellant. Therefore, the appellant cannot say that he was not responsible for causing any fatal injury and that there was no evidence to the effect that he caused a fatal injury. [Paras 9, 11 and 12] [1035-E-G; 1036-C-F]

4. In the circumstances of the case, there is no scope to compare the extent of involvement of the appellant in

the crime vis-à-vis the other accused to countenance the submission of the appellant to treat him on par with the other accused persons who were acquitted. [Para 13] [1037-B-C]

5. It is not as if the appellant had no intention to cause the death of the deceased or to cause such bodily injury with such a lack of intention. About twelve days prior to the occurrence, the accused had apprehended him and stated to have also assaulted him. On that occasion, the deceased stated to have escaped and reported the said incident to PW-1. PW-1, along with the deceased, stated to have reported the incident to the village Panchayat President who advised them to prefer a police complaint since the accused were not amenable to any Panchayat proceedings. PW-5, who is a local prominent person, in his evidence also supported the above version of PW-1. PW-4 the mother of the deceased also supported the said version of PW-1. [Para 13] [1037-D-H]

Case Law Reference:

2012 (1) SCC 529 Relied on Para 7
2003 (2) Suppl. SCR 35 Relied on Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 879 of 2010.

From the Judgment & Order dated 12.12.2008 of the High Court of Madras, Madurai Bench in CrI. A. No. 1089 of 2001.

Nagendra Rai, M. Yogesh Kanna, V.N. Raghupathy for the Appellant.

B. Balaji, R. Rakesh Sharma for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal, at the instance of accused No.1 is directed against the

A judgment of the Division Bench of the Madras High Court dated
12.12.2008 in Criminal Appeal 1089 of 2001 by which the High
Court while confirming the conviction and sentence imposed
on appellant-accused No.1 (A-1), set aside the conviction and
sentence as against accused-6 (A-6) and acquitted him of the
B charges.

2. The case of the prosecution as projected before the
Court below was that Murugesan (PW-1) and Sankar
(deceased) were brothers and were native of a place called
C Sooriyur. As is the practice in their village, in the month of
Markazhi (Tamil month), there used to be a game called Manju
Virattu also called as Jalli Kattu in which bulls brought from
other villages would be confined in an enclosure and then the
bulls would be allowed to run, throwing a challenge to the
D youngsters to tame them and whosoever controls such bulls,
used to get a reward in the function. It is stated that on
09.01.2000 which was in the Tamil month of Markazhi, the bull
belonging to the appellant, who belonged to the place called
Thiruvallarchipatti participated in the function. The deceased
E stated to have controlled the said bull and the appellant was
stated to have been aggrieved by the so-called heroism of the
deceased which resulted in alleged threat to the deceased.
Twelve days prior to the murder of the deceased, six persons
including the appellant stated to have quarreled and also
F assaulted the deceased which, according to PW-1 was
reported by the deceased to him (PW-1). PW-1 appeared to
have consoled the deceased by stating that they can report the
conduct of the appellant and others to the local Panchayat. On
04.02.2000 at 10.30 a.m., when the deceased along with PW-
1 was waiting at the bus stand which place was known as
G Manthai, the appellant and other accused chased the
deceased and caught hold of the deceased at Mamundi
temple. While the appellant inflicted cut injuries in the left
arm of the deceased with the weapon called aruval, the other
accused stated to have inflicted certain other injuries on the
H head, leg and the buttocks of the deceased. On sustaining the

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injuries, the deceased stated to have fallen down. He was carried by PW-1 to his residence and from there, after arranging taxi from nearby town called Thiruvaramboor shifted him to Trichy Government Hospital around 01.30 p.m. The deceased was examined by Dr. Saminathan (PW-8) to whom the deceased informed that he was assaulted by six known persons. However, it is stated that the deceased did not survive and breathed his last around 2 p.m. Based on the information given by PW-1, a case was registered by sub-Inspector Ethiraj (PW-9) as crime No.20/2000 in the Navalpattu Police Station for offences under Sections 147, 148, 341 and 302, Indian Penal Code (for short 'IPC'). Inspector Kailasanathan (PW-12) stated to have simultaneously gone to the place of occurrence. He prepared the observation Mahazar in the presence of witnesses and also prepared a model sketch Exhibit P-6. The statements of witnesses were also recorded by him and then he went to the Government hospital, Trichy and prepared an inquest report Exhibit P-18. He also stated to have examined other witnesses including PW-1. The body of the deceased was sent for post mortem on the same day. On 05.02.2000, he enquired other witnesses and on 06.02.2000 at 4 p.m. Sakthivel (A-6) was arrested and based on the admissible portion of his statement five aruvals were stated to have been recovered from the thorn bush at 5.30 p.m. near a place called Koonavayil adjacent to Sulingu which were recovered in the presence of witnesses under Exhibit P-20. The post mortem was conducted by Dr. Karthikeyan (PW-11) and the post mortem certificate was marked as Exhibit P-15. The post mortem report disclosed as many as five injuries and the doctor opined that the deceased appeared to have died of shock and hemorrhage due to injury Nos.4 and 5.

3. All the accused were tried before the trial Court wherein the prosecution examined PWs-1 to 12, marked Exhibit P-1 to 20 and M.O.s 1 to 10. While M.O. 1 to 5 were the weapons, namely, aruval, M.O.6 was blood stained polyester lungi, M.O.-7 was blood stained Kasi towel, M.O.8 was blood stained

A sand, M.O.-9 was unstained sand and M.O.-10 was yellow and blue colour mixed lungi seized from the deceased.

4. PW-1 to 3 were examined as eye witnesses. However, in the course of the examination PW-2 and 3 turned hostile and PW-1 alone supported the case of the prosecution. After the 313 questioning in which all the accused denied their participation in the crime, the trial court analysed the materials placed before it and reached a conclusion that except A-1 and A-6, guilt was not made out as against others, namely, A-2, A-3, A-4 and A-5. In the appeal preferred by the appellant-A-1 and A-6, the High Court set aside the conviction and sentence imposed on A-6 and confirmed the conviction and sentence imposed upon the appellant (A-1) herein.

5. We have heard Mr. Nagendra Rai, learned senior counsel for the appellant and Mr. B. Balaji, learned counsel for the respondent State. Mr. Rai, learned senior counsel raised three contentions. He contended that there was delay in preferring the complaint and the registration of the FIR and, therefore, on that ground the case of the prosecution should fail. It was then contended that as per the evidence of post mortem doctor (PW-11) injury Nos. 4 and 5 were fatal to the death of the deceased and those injuries were not attributed to the appellant -accused No.1 and when the other accused persons were released, the conviction and sentence imposed on the appellant cannot be sustained. In support of the said submission, learned counsel relied upon the deposition of PW-1 himself. Lastly, it was contended that even if the entire case is accepted, the case would fall under Section 304 Part II, IPC, and the appellant, having remained in jail for five years, no further punishment need be imposed.

6. As against the above submissions, Mr. Balaji, learned counsel for the State contended that there were enough evidence placed before the Court to hold that injury No.4 was caused at the instance of the appellant, that the said injury as

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described in the post mortem certificate was so grave in nature and the post mortem doctor (PW-11) having opined that the said injury as well as injury No.5 were the cause of death of the deceased, the appellant was rightly convicted by the courts below. Learned counsel further pointed out that the deceased was examined by Dr. Sāminathan (PW-8) when he was alive. He also noted the injuries in Exhibit P-8 which tallied with the post mortem report Exhibit P-15 prepared by PW-11, that PW-1 who witnessed the occurrence categorically stated that injury No.4 was inflicted by the appellant, that there is no reason to disbelieve the said version of PW-1. Learned counsel, therefore, contended that the case of the prosecution as against the appellant in inflicting injury No.4 on the deceased was consistent with Exhibit P-1 as well as the ocular evidence of PW-1 and, therefore, no ground was made out for the acquittal of the appellant. The learned counsel also contended that apart from the above, there is evidence to show that the deceased was threatened earlier also by the appellant and other accused, followed by which on 04.02.2000 he was murdered and, therefore, there is no question of invoking Section 304 part II, IPC to reduce the rigour of the offence found proved against the appellant.

7. Having heard learned counsel for the appellant as well as the respondent State, we are also convinced that the appeal does not merit any consideration. It is true that the whole case depends on the evidence of PW-1, the sole eye witness to the occurrence. It is also true that he is the brother of the deceased. It was not argued before us that since because he is the brother of the deceased, his version is liable to be thrown out. In this context, it will be worthwhile to refer to the recent decision of this Court reported as - 2012 (1) SCC 529 - *Jaisy @ Jayaseelan v. State Rep. by Inspector of Police*. That was also a case where there were more than one witnesses and ultimately except PW-1 in that case, the other eye witnesses turned hostile. PW-1 was also the brother of the deceased. This Court, while holding that on that ground alone his evidence could

A not be discarded, reiterated the law laid down by this Court in the decision reported as *Sucha Singh & Another v. State of Punjab - 2003 (7) SCC 643* which has been extracted in para 9 of the *Jaisy's* (supra) judgment. The same can be usefully referred to hereunder.

B "9. As stated by this Court in *Sarwan Singh v. State of Punjab* and *Sucha Singh v. State of Punjab* it is not the law that:

C "10. ... the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. *Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration.*"

E [emphasis added]

This submission of the learned counsel is, therefore, rejected."

F 8. Keeping the above legal perception in mind, when we examine the submission of learned counsel for the appellant, the contention that there was delay in registering the FIR does not cause any serious dent in the case of the prosecution. Such submission was dealt with by the trial Court itself in a detailed manner wherein it was noted that immediately after the occurrence, noting the condition of the deceased, PW-1 took him to his house, arranged for a taxi to shift him to the hospital by which time it was 1.30 p.m. Since the deceased was in a serious condition, it was quite apparent that PW-1 as his brother had to stay along with him in the hospital and as was

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expected, despite the treatment given to the deceased, he died in the hospital around 2 O'Clock. The only other person who was available with him was his mother Govindammal (PW-4). The avocation of PW-1 is agriculture. The deceased himself was working as a mason. Having regard to the unfortunate occurrence to his deceased brother, he would have only concentrated in staying at the hospital to support his mother and for taking required other steps to deal with the dead body of the deceased. Moreover, according to Ethiraj (PW-9) sub Inspector attached with the Navalpattu police station, he received information from the Trichy Government hospital where he recorded the statement of Murugesan (PW-1) and he registered the crime as Crime No.20/2000 under Sections 147, 148, 341 and 302, IPC and recorded First Information Report and the express report-Exhibit P-9 was also forwarded to the Court through head constable 234. Noting such sequence of events, from the time of the occurrence till the registration of the FIR, we do not find any substance in the plea of the appellant that there was delay in the registration of the FIR. The said submission, therefore, stands rejected.

9. As far as the second submission, namely, that there was no evidence to connect the appellant to any of the injuries sustained by the deceased, here again as rightly contended by learned counsel for the State, we find that the said submission is not borne out by records. While examining the said contention, we feel it appropriate to refer to injury No.1 as described by PW-8 the doctor who attended on the deceased immediately after his admission to the hospital at which point of time the deceased was alive. The said injury was noted as first injury and was mentioned as an incised wound measuring 10 x 5 cm x bone deep over dorsal aspect of left elbow exposing elbow joint".

10. In the post mortem report Exhibit P-15, the said injury has been noted as under:-

A "(4) A transverse chop wound, 9cm x 4cm exposing
 the underlying structures on the back of upper third of left
 forearm, 4cm below the elbow joint with marginal bruising
 dark red, O/E, the edges are clean cut. The underlying
 tendons, muscles, blood vessels, nerves are found
 B completely cut. Diffusion of blood into the surrounding
 tissues present. The portion of the left forearm distal to the
 wound is found attached by the skin on the front aspect."

11. The post mortem doctor PW-11 in his evidence which
 is in vernacular (Tamil), while describing the injury, made it clear
 C that the tissues, the blood vessels, the nerves and the bones
 were completely cut and the front forearm was just hanging with
 the attached skin. As far as the said injury was concerned, as
 pointed out by the counsel for the State, in Exhibit P-1, it was
 reported by PW-1 that at the time of occurrence, when his
 D brother attended a telephonic call and was returning back near
 the bus stand, he was chased by A-1 to A-6 who were armed
 with aruvals. His brother was cornered by them in front of
 Mamundi temple and while A-2 Vijay Kumar held his brother,
 A-1 caused a cut injury on the left elbow of his brother and that
 E his brother fell down to the left side. Before the Court also, PW-
 1 reiterated the said version as against the appellant.
 Therefore, it is too late in the day for the appellant to contend
 that he was not responsible for causing any fatal injury and that
 there was no evidence to the effect that he caused a fatal injury.

F 12. At the risk of repetition, it will have to be stated that
 PW-11, the post mortem doctor in his opinion made it clear that
 the death of the deceased was caused by injury Nos.4 and 5.
 The High Court in para 11 of its judgment has only referred to
 the trial Court's judgment in para 25 insofar as it related to the
 G other accused and in particular relating to A-6 where the trial
 Court observed as regards others that when several persons
 were involved in an occurrence, it was not possible to say which
 accused caused which injury. The said observation made by
 the trial Court and referred to by the High Court cannot be cited
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out of context when there was direct evidence against the appellant connecting his part of inflicting injury No.4 on the deceased and the nature of injury was so grave. The post mortem doctor PW-11 clearly opined that the said injury along with injury No.5 was the cause of the death of the deceased.

13. In such circumstances, there is no scope to compare the extent of involvement of the appellant in the crime vis-à-vis the other accused to countenance the submission of learned senior counsel for the appellant to treat him on par with the other accused persons who were acquitted. With this, when we come to the last of the submissions made by the learned senior counsel, namely, that at best the conviction can only fall under Section 304 Part II, IPC, here again we are not in a position to accede to such submission . It is not as if the appellant had no intention to cause the death of the deceased or to cause such bodily injury with such a lack of intention. In that context, as rightly pointed out by the learned counsel for the state, about twelve days prior to the occurrence, when the deceased was returning from his work and got down at the bus stop, the accused apprehended him and stated to have also assaulted him. On that occasion, the deceased stated to have escaped and reported the said incident to PW-1. PW-1, along with the deceased, stated to have reported the incident to the village Panchayat President who advised them to prefer a police complaint since the accused were not amenable to any Panchayat proceedings. It is, however, stated that no police complaint was lodged with reference to the said incident. PW-1 reiterated the said fact in his oral evidence before the Court. In the cross examination he further stated that he did not report the said incident to the police as he felt that it can be sorted out at the level of Panchayat. PW-5, who is a local prominent person, in his evidence also supported the above version of PW-1. PW-4 the mother of the deceased also supported the said version of PW-1 that the same was reported to the Panchayat's President who advised them to lodge a complaint to the police.

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- A 14. When the said piece of evidence is analysed along with the alleged occurrence that took place on 04.02.2000, it is crystal clear that the appellant had an axe to grind against the deceased which he got fulfilled by executing the same by inflicting a fatal injury, namely, injury No.4 on the deceased and
- B that caused the death of the deceased. When such is the clear evidence available on record, there is no scope to apply Section 304 part II, IPC or by way of mitigatory factor to dilute the rigour of the criminal act committed by the appellant. We, therefore, do not find any scope to alter the sentence as
- C pleaded on behalf of the appellant. We find no merit in the appeal and the same is dismissed.

K.K.T.

Appeal dismissed.