

EDWARD

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v.

INSPECTOR OF POLICE, AANDIMADAM POLICE
STATION

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(Criminal Appeal No. 707 of 2007)

MARCH 11, 2015

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

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Penal Code, 1860: s.302 – Land dispute between the deceased and the accused persons – Appellant and other accused persons attacked victim-deceased with deadly weapons resulting in death of the deceased – Conviction of accused u/s.302 based on evidence of sole eye witness – High Court modified conviction to s.304 Part II – Appeal against conviction – Held: No ground to doubt reliability of evidence of sole eye witness – Facts proved presence of accused with common intention to attack the deceased – Interference with the conviction not called for.

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Dismissing the appeal, the Court

HELD: In the case of **Dalip Singh vs. State of Punjab*, it was held that when feelings run high and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom the witness has a grudge but foundation must be laid for such a criticism and each case must be judged and governed on its own facts. In this case, there was no evidence for the eye-witness to be inimical towards the accused. There was no ground to doubt the reliability of the evidence provided by PW-3. Even if there is a

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A difference between ocular and medical evidence, it is clear from the facts that the accused were present there with the common intention to attack the deceased. Thus, a difference between ocular and medical evidence will not stand any ground in acquitting the accused in the present case. [Paras 8, 9 and 10] [999-G-H; 1000-A-D]

*Dalip Singh and Ors. State of Punjab** 1954 (1) SCR 145; *Bipin Kumar Mondal v. State of West Bengal* (2011) 12 SCC 91; 2010 (8) SCR 1036 – relied on.

State of Orissa v. Brahamananda Nanda (1976) 4 SCC 288; *State of Karnataka v. Venkatesh and Ors.* (1992) Suppl.1 SCC 539; *Harish Kumar v. State Delhi Administration* (1994) Suppl. 1 SCC 462 – referred to.

Case Law Reference

	(1976) 4 SCC 288	referred to.	Para 5
E	(1992) Suppl.1 SCC 539	referred to.	Para 5
	(1994) Suppl. 1 SCC 462	referred to.	Para 6
	1954 (1) SCR 145	relied on.	Para 8
F	2010 (8) SCR 1036	relied on.	Para 9

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 707 of 2007.

G From the Judgment and Order dated 16.03.2006 of the High Court of Judicature at Madras in Crl. Appeal No. 1540 of 2002.

M. N. Rao, Basant R., S. Thananjayan, Promila, Karthik Ashok for the Appellant.

H M. Yogesh Kanna, Santha Kumaran, Vanitha C. Giri,

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for the Respondent.

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The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These appeals have been filed by accused persons against the judgment and order dated 16.3.2006 passed by the Madras High Court in Criminal Appeal No.1540 of 2002 by which the High Court has dismissed the appeal filed by the appellants. The facts of the case as narrated by the prosecution are briefly stated as under:

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2. The deceased Michaelraj and the accused persons were residents of the same Village in Taluk Udayarapalayam in District Perambalur. There was a land dispute between Michaelraj and the accused persons on account of which there was enmity between them. Originally, the grandmother of the deceased Michaelraj executed a settlement deed in favor of Michaelraj which was subsequently cancelled. Thereafter, a portion of the property was executed in favor of the appellant. Despite the settlement deed, the appellant claimed that his possession of property was disturbed by the deceased and his relatives. Therefore, the appellant filed a suit against the deceased and his relatives. The appellant further claimed that even though interim orders were passed in the suit, Michaelraj and his relatives did not allow the appellant to enjoy his possession of the property.

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3. On 10.12.1997 at around 7:30 p.m., when Michaelraj along with his friend John Paul was returning from the house of his father-in-law, the appellant and other accused persons attacked him with deadly weapons. This occurrence was witnessed by John Paul (PW-1) and Anthoni Raj (PW-3). The deceased sustained injuries and was taken to the hospital in a serious condition. In the meantime, PW-1 went

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A to the Police Station and filed an FIR to PW-11. Subse-
quently, a case was registered under Sections 147, 148,
341, 324 and 307 of the Indian Penal Code ("IPC"). On
14.12.1997, Michaelraj died at the hospital and thereafter
the inspector of police (PW-12) altered the case into one
B under Section 302 of the IPC. PW-12 filed an application
seeking police custody from the Court. On police custody,
he obtained confession from the appellant, which led to the
recovery of weapons, which were sent for chemical exami-
nation. Thereafter, PW-14 took up the matter from PW-12
C and investigated the case further and filed a charge-sheet
for offence under Section 302 of the IPC.

4. The matter came up before the Trial Court, which
after going through the evidence provided by the sole-eye-
D witness PW-3, concluded that the case of prosecution is
proved beyond doubt and thereby convicted the accused
under Sections 148, 149, 302 & 341 of IPC. Aggrieved by
the judgment of the Trial Court, the accused preferred an
E appeal before the Madras High Court. The High Court vide
its judgment and order dated 16.3.2006, partly allowed the
appeal filed by the accused persons, convicted them un-
der Section 304 Part II of IPC and sentenced them to rig-
orous imprisonment for five years, stating that the doctor
F who treated the deceased was not examined and the docu-
ments regarding the nature of treatment were not produced.
Aggrieved by the said judgment and order passed by the
High Court, the sole appellant is before us.

5. We have heard the learned counsel appearing on
G behalf of the parties. Learned counsel appearing for the ap-
pellant has relied on the case of *State of Orissa v.*
Brahamananda Nanda, (1976) 4 SCC 288, in which the
entire case of the prosecution rested on the oral evidence
H provided by an eye-witness, which was rejected by the High

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Court and simultaneously dismissed by this Court. The A
counsel for the appellant also relied on the case of *State*
of Karnataka v. Venkatesh and others, (1992) Suppl.1 SCC
539, in which it has been held by this Court that in absence
of reliable testimony and evidence, guilt of the accused
cannot be proved. The learned counsel contended that in B
the present case, there was no reliable evidence adduced
by PW-3 as he was the only witness providing evidence
against the accused and it can be further seen that PW-1
had turned hostile.

6. Learned counsel for the appellant further relied on C
the case of *Harish Kumar v. State Delhi Administration*,
(1994) Suppl. 1 SCC 462, in which it has been held by this
Court that it was not given proper materials to examine the
nature of the treatment given to the deceased. The coun- D
sel stated that in the present case, the nature of treatment
given to the deceased by the doctors had not been recorded
and the deceased died four days after the occurrence of
the incident. So it cannot be concluded that the deceased
died exclusively due to the injuries. E

7. Learned counsel for the Respondent on the other
hand, supported the impugned judgment passed by the
High Court.

8. With regard to the contention of the counsel for ap- F
pellant where he has stated that the single eye-witness is
inimical towards the accused, in the case of *Dalip Singh*
and Ors. v. State of Punjab, (1954) 1 SCR 145, it has been
held by this Court that, it is true when feelings run high and G
there is a personal cause for enmity, there is a tendency to
drag in an innocent person against whom the witness has
a grudge but foundation must be laid for such a criticism
and each case must be judged and governed on its own
facts. In this case we do not see any evidence for the eye- H

A witness to be inimical towards the accused.

9. In the case of *Bipin Kumar Mondal v. State of West Bengal*, (2011) 2 SCC (Cri) 150 = (2010) 12 SCC 91, it has been held by this Court that there is no legal impediment in convicting a person on the sole testimony of a single witness provided he is wholly reliable. In the present case there is no ground to doubt the reliability of the evidence provided by PW-3.

10. Even if there is a difference between ocular and medical evidence, it is clear from the facts that the accused were present there with the common intention to attack the deceased. Thus, a difference between ocular and medical evidence will not stand any ground in acquitting the accused in the present case.

11. In view of the above discussion, we are of the considered opinion that the facts and circumstances of the case do not warrant any interference by us in the matter. The appeals lack merit and are accordingly dismissed.

Devika Gujral

Appeal dismissed.