2022 INSC 1093

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1750-1751 OF 2022

State through the Inspector of Police …Appellant

Versus

Laly @ Manikandan & Another Etc. …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.06.2018 passed by the High Court of Judicature at Madras, at Madurai in Criminal Appeal Nos. 270/2017 and 362/2017, by which the High Court has allowed the said appeals by acquitting the respondents – accused for the offences punishable under Sections 302 and 302 r/w 34 IPC, the State has preferred the present appeals.

2. That the respondents herein – original accused were tried for the aforesaid offences for having killed/committed the murder of deceased Saravanan. It was the prosecution case that owing to animosity between the friend of the accused viz., Selvakumar and one Periyavan @ Murugan, there was a murder of Selvakumar on 31.07.2013. Suspecting that the deceased Saravanan had informed the whereabouts of Selvakumar, the accused, on a two-wheeler armed with weapons obstructed the car in which the deceased, PW1 and one another were travelling and dashed the car and broke the wind screen of the car with aruvals. A1 caused the injury on the right shoulder of the deceased. The deceased Saravanan tried to run away, however, the accused chased him and thereafter all the accused caused injuries on the deceased in the shed in which the deceased reached and due to the injuries suffered the deceased Saravanan died on the spot. The investigation started on the FIR being registered on the complaint tendered by one Mahendran. All the accused came to the arrested on 02.08.2013/17.08.2013. During the course of investigation, the Investigating Officer collected the material evidence and also recorded the statements of the witnesses. After conclusion of the investigation, a charge sheet was filed against the accused for the offences punishable under Sections 341, 506(2), 302 IPC r/w 3(1) of TNPPDL Act. The case was committed to the Court of Sessions which was numbered as

Sessions Case No. 254 of 2014. All the accused pleaded not guilty and therefore they came to be tried by the learned Sessions Court for the aforesaid offences.

2.1 During the trial, prosecution examined 21 witnesses and marked 36 exhibits and 16 material objects. After the closure of the prosecution evidence, further statements of the accused under Section 313 Cr.P.C. were recorded. During the trial, PW2, PW3 and PW5 did not support the prosecution case and were declared hostile. However, believing the deposition of PW1, PW4 and PW6, the learned trial Court held the accused A1 guilty for the offence under Section 302 IPC and A2 & A3 for the offences under Section 302 r/w 34 IPC and sentenced each of them to undergo life imprisonment and fine of Rs. 1,000/- each, in default, three months simple imprisonment.

2.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, the accused preferred the present appeals before the High Court. By the impugned judgment and order, the High Court has set aside the judgment and order of conviction and sentence passed by the learned trial Court and consequently has acquitted the accused for the aforesaid offences for which they were convicted. The High Court has acquitted the accused

for the reasons mentioned in paragraph 9 of the impugned judgment, which reads as under:

> "9. These appeals succeed for the following reasons:
>
> (i) The prosecution case is that the occurrence took place at 01.30 p.m., on 31.07.2013 and the FIR was registered at 01.45 p.m. on the same day, on the complaint tendered by one Mahendran at the police station. The said Mahendran has not been examined.
>
> (ii) The Prosecution has examined P.W.1 to P.W.6 as eye-witnesses. While P.Ws.2, 3 and 5 have not supported the prosecution and have been treated hostile, P.W.4 and 6 have been disbelieved by the trial Court. P.W.4 has been disbelieved as he informed that the occurrence took place at 2.30 p.m., and that the deceased fell down outside the thatched shed of P.W.2., whereas the prosecution case is disbelieved since he has spoken to an attack by 8 to 9 persons, whereas the prosecution case is of an attract by the three accused/ appellants herein.
>
> (iii) Contra to the prosecution case, it is the admission of P.W.1 that the police were at the scene within 5 to 10 minutes of the occurrence. Both P.W.1 as also P.W.4 would submit that the statements of all the witnesses were recorded at the scene and their signatures were taken. P.W. 1 would particularly state that on recording the statement of Mahendran, the complainant, Mahendran; signatures were obtained and the same was attested by P.W.1 as also by P.W.4. The complaint in the case has not been marked, though by way of an inadvertent error, as we find from a perusal of the records, that the FIR has on the front side been marked as Ex.P.20 while on the reverse has been marked as Ex.21 and the complaint is found annexed thereto. A doubt arises as to whether the FIR marked as Ex.P.20 and the complaint annexed therewith inform the original version as not only has the complainant not has been examined, it is the version of the prosecution witnesses that the complaint was recorded at the scene.
>
> (iv) P.W. 20 Sub Inspector of Police, who has registered the FIR informs the distance between the police station and the Court to be 7 kms, FIR informs the scene to be a distance of 2 ½ km from the police station. The FIR has reached the Magistrate only at 7.00 p.m. Such circumstance give rise to a doubt on the genuineness thereof and raises the question of whether the genesis of the occurrence stands suppressed. The detailed
> narrative from of FIR informing the grudge of the accused against the deceased and the need to murder him only further fuels such doubt, The

> fact that the Constable entrusted with handing over the FIR to the Magistrate has not been examined makes matters worse for the prosecution.
>
> (v) P.W. 1 has spoken to seeing the accused at the police station on the very next day of the occurrence ie., on 01.08.2013, whereas the prosecution case is that Al and A3 were arrested on 02.08.2013 and A2 was arrested on 17.08.2013.
>
> (vi) According to the prosecution, the recovery of the aruvals have been effected from all the accused. P.W.1 in cross, would state that the aruvals were handed over by them ie., the prosecution party to the police.
>
> (vii) Blood stained aruvals have been recovered. Postmortem stands conducted, but the blood group of the deceased has not been ascertained. Ex.P.16 would inform the presence of blood stains on the clothes worn by the deceased, and on the aruvals. No attempt has been made to correlate the blood group as admitted by P.W.21, Investigation Officer.
>
> Giving the serious lacunae above noted, we do not consider it necessary to dwell on the delayed dispatch of the 161(3) Cr.P.C., statements to Court."

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court acquitting the accused, the State has preferred the present appeals.

3. Dr. Joseph Aristotle S, learned counsel has appeared on behalf of the State and Shri Rao Ranjit, learned counsel has appeared on behalf of the accused.

3.1 Learned counsel appearing on behalf of the State has vehemently stated that in the facts and circumstances of the case, the High Court has committed a grave error in acquitting the accused by quashing and setting aside the judgment and order of conviction and sentence passed

by the learned trial Court convicting the accused for the offences under Section 302 and 302 r/w 34 IPC.

3.2 It is vehemently submitted that in the present case the prosecution has fully proved the case against the accused by examining the relevant witnesses. It is submitted that PW1 is the eye witness to the occurrence of the incident and he has fully supported the case of the prosecution.

3.3 It is submitted that the incident occurred in two parts. The first part was at the time when the deceased, PW1 and one another were travelling in the car where A1 caused the injury on the deceased on the right shoulder and thereafter is the second part when the accused chased the deceased when he was trying to run away and reached the shed and all the three accused entered the shed, caused injuries on the deceased and thereafter they came out of the shed and ran away. It is submitted that at both the places, PW1 was present and he had seen the occurrence of the incident at both the places. It is submitted that there is no reason to disbelieve the testimony of PW1. Learned counsel for the State has taken us to the deposition of PW1.

3.4 Making the above submissions and relying upon the decision of this Court in the case of ***Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 (para 35)***, it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court and

restore the judgment and order of conviction and sentence passed by the learned trial Court against the accused for the offences under Sections 302 and 302 r/w 34 IPC.

4. The present appeals are vehemently opposed by the learned counsel appearing on behalf of the original accused.

4.1 It is vehemently submitted that as such the High Court has given cogent reasons while acquitting the accused.

4.2 It is submitted that out of the six witnesses examined by the prosecution as eye witnesses, three witnesses – PW2, PW3 and PW5 have not supported the case of the prosecution. It is submitted that PW4 has been disbelieved even by the learned trial Court due to material contradictions in his deposition and the case of the prosecution.

4.3 It is further submitted that in the present case, Mahendran who tendered the complaint at the police station and on the basis of which an FIR has been registered has not been examined. It is submitted that though other independent witnesses were available, none of them have been examined by the prosecution. It is submitted that therefore to rely upon the sole witness – PW1 is not safe to convict the accused.

4.4 It is further submitted that even there are material contradictions in the deposition of PW1 and other witnesses about the injuries caused. It

is submitted that so far as the second part of the occurrence is concerned, the same occurred in the shed and even according to PW1, he was outside the shed and he has not seen the accused causing injuries on the deceased. It is submitted that therefore PW1 cannot be said to be reliable and trustworthy witness and therefore the accused may not be convicted on the sole deposition of PW1.

4.5 It is further submitted by the learned counsel appearing on behalf of the accused that even the recovery of weapon cannot be said to have been proved by the prosecution.

4.6 Making the above submissions and relying upon the decision of this Court in the case of ***Kunju Muhammed v. State of Kerala, (2004) 9 SCC 193 (paras 9 & 10)***, on the timing and place of incident, it is prayed to dismiss the present appeals.

5. We have heard learned counsel for the respective parties at length. We have gone through in detail the judgment and order of conviction and sentence passed by the learned trial Court as well as the impugned judgment and order passed by the High Court. We have gone through in detail the deposition of PW1 who can be said to be a star witness and the eye witness.

6. Having gone through the entire deposition of PW1, it can be seen that PW1 is the eye witness to the occurrence at both places. When

first, the accused attacked while the deceased was travelling in the car, PW1 was present in the car. At that time, the accused dashed the car and broken the wind screen and A1 caused injury on the right shoulder of the deceased. That thereafter the deceased tried to run away and he reached the shed and at that time all the accused chased the deceased, went into the shed, caused injuries on the deceased and then came out of the shed and ran away. PW1 has categorically stated that he had seen all the three accused entering the shed and thereafter they came out and the deceased was lying with the injuries and he was found dead. PW1 has been fully cross-examined on behalf of the accused. However, even after thorough cross-examination, PW1 stood by what he has stated and has fully supported the case of the prosecution. We see no reason to disbelieve and/or doubt the credibility of PW1.

7. The submission on behalf of the accused that as the original informant – Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eye witness to the occurrence at both

the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a *sine qua non* to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness.

8. As observed hereinabove, PW1 is an eye witness. He has fully supported the case of the prosecution. As per settled position of law, there can be a conviction on the basis of the deposition of the sole eye witness, if the said witness is found to be trustworthy and/or reliable. As observed hereinabove, there is no reason to doubt the credibility and/or reliability of PW1. Therefore, it will be safe to convict the accused on the sole reliance of deposition of PW1.

9. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court acquitting the accused for the reasons mentioned in paragraph 9 of the impugned judgment and order is unsustainable and the same deserves to be

quashed and set aside. Accordingly, the impugned judgment and order passed by the High Court acquitting the accused for the offences under Sections 302 and 302 r/w 34 IPC is hereby quashed and set aside and the judgment and order passed by the learned trial Court convicting the accused for the offences under Sections 302 and 302 r/w 34 IPC is hereby restored. Now the accused to surrender before the concerned Jail authorities/concerned Court to undergo the sentence as imposed by the learned trial Court, within a period of six weeks from today. If the accused do not surrender with the time stipulated hereinabove, the concerned Superintendent of Police/Court is directed to take the accused into custody to serve out the sentence.

10. The present appeals are allowed accordingly.

……..J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 14, 2022.

……J.
[KRISHNA MURARI]