

ITEM NO.103

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1119 OF 2008

KUMAR @ ARASAKUMAR

Appellant (s)

VERSUS

STATE REP.BY INSP.OF POLICE.PONDICHERRY

Respondent(s)

(With office report)

Date: 20/04/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. S.Mahendran, Adv.

For Respondent(s)

Mr. V. Kanagaraj, Sr. Adv.
Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

UPON hearing counsel the Court made the following
O R D E R

For the reasons recorded in the signed
order, the appeal is dismissed.

(KALYANI GUPTA)
COURT MASTER

(VINOD KULVI)
COURT MASTER

Cr1.A. No. 1119 of 2008

1

[SIGNED ORDER IS PLACED ON THE FILE.]

Cr1.A. No. 1119 of 2008

2

KUMAR @ ARASAKUMAR

..... APPELLANT

VERSUS

STATE REP. BY INSP. OF POLICE,
PONDICHERRY

..... RESPONDENT

O R D E R

1. Shanthi PW 1 is the elder sister of Ramesh, the deceased, and Janki, PW2 is their mother. On 10th of July, 2001 at about 10:30 or 11:00a.m. when the deceased Ramesh was near the arrack shop in village Bommiyanpettai there was some dispute between him and Al Gopal. At that time, Ramesh assaulted Gopal who in turn threatened him with dire consequences. This was also witnessed by PW 2 Janki. At about 8:00pm the same evening Ramesh was in his house, he developed a stomach pain on which PW 1 Shanti took him to the shop for getting a soda to drink. As they were proceeding to the shop Gopal came behind them, caught Ramesh by his neck with a towel and restrained him from going any

Crl.A. No. 1119 of 2008

3

further and tried to drag him to away. PW 1 followed them and saw that the other five accused were also present. A village boy on seeing this ran home and informed PW 2 who followed him and reached the scene of the crime. Ramesh was ultimately dragged to the Victoria Nagar Crossing in front of Thirupath provision store where A3 and A4 caught hold of his hands and Al Gopal stabbed him in the chest and A2 Kumar took out a pen knife from his pocket and stabbed

the

i

him in the flank. The noise that came about also attracted PW 6 Sarasu to the place of incident.

accused then ran away from the spot. The injured

Ramesh was then taken to the Government Hospital

Pondicherry by PW 1 where he was treated by the doctor.

The doctor also informed the police through Exhibit P27

that he had been brought to the hospital in an injured

condition and that five persons A1 Gopal, and

others had caused the injuries to him. On receipt of

the note Exhibit P27 the Sub Inspector reached

place of incident and recorded the statement of PW 1

and on its basis a case under Sections 342 and 307 read

with Section 34 IPC was registered. Ram

subsequently died leading to a case of murder as well.

All the accused were ultimately arrested and

brought to trial for offences punishable under Sections

302/148/149 of the IPC.

The trial court relying on the

Crl.A. No. 1119 of 2008

4

evidence of PW 1 and 2 acquitted A6 but convicted the

other accused. The matter was thereafter taken i

appeal to the High Court by the accused who had been

convicted and the High Court allowed the appeal of A3,

A4 and A5 and dismissed the appeal of A1 Gopal and A2

Kumar on the murder charge but acquitted them of the

offences under Sections 342 and 148 of the IPC. It is

the admitted case that the Special Leave Petition filed

by Gopal has been dismissed by this Court and as of

today the only person who remains before us is Kumar

A2.

2. The learned counsel for the appellant has argued that the High Court, having disbelieved the entire evidence with regard to the other accused, it was clear that PW 2 could not be said to be an eye-witness more particularly as her testimony found no support from the medical evidence.

3. Mr. Kanagaraj, learned Senior Counsel for the Union Territory, has however, supported the judgment of the High Court. It is true that the High Court has

disbelieved the evidence of PW 2 as she had arrived at the scene after the incident and could not have been an eye witness. We have no doubt, however, that her evidence inspires full confidence. It has come in

evidence that when the doctor had sent the information

to the police by Exhibit P27, the name of only A1 had

Crl.A. No. 1119 of 2008

5

been mentioned therein but the fact that there were other four accused had also been noted.

Likewise, in

the inquest report made soon after the FIR had been recorded, the name of A2 figures as one of the accused.

It therefore appears that name of A2 had surfaced soon after the investigation had started subsequent to the registration of the FIR. Some doubt could have been

created had the medical evidence not supported the

ocular testimony. We have noticed that the judgment of

the trial court and the High Court referred to the fact

that the second injury attributed to the appellant had been caused in the right flank. The 'flank' as per the

dictionary meaning is the portion of the body which

is between the ribs and the hips. In other words as

per the courts below the injury had been caused in the

abdominal cavity on the right side. Mr. Kanagaraj, the

learned Senior counsel for the respondent-Union

Territory has, however, pointed out that this translation appears to be wrong inasmuch as that PW 2 had stated that the injury had been caused on the ribs. To assist us on this argument, we requested the learned counsel representing the parties as also some others who were conversant with the Tamil language and were present in Court, to help us appreciate the evidence of PW 1. It was unanimously agreed that the evidence

talks about the second injury attributed to the
Crl.A. No. 1119 of 2008

6

appellant was in the ribs and in the chest cavity. The translation made by the trial court as well as the High Court, therefore, finding that the injury was in abdominal area was not correct. We, therefore, find that the medical evidence supports the eye witness account of PW 1. We have absolutely no reason to interfere in the matter. The appeal is dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
APRIL 20, 2011.