

Kitherian

....Appellant

VS.

State of Tamil Nadu

....Respondent

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On the fateful evening of 30th August, 1986 at about 5 p.m. an occurrence took place on the sea-shore of village Kuthankuzhi where the deceased was present with his catch of Thirukkai fish. According to the prosecution case, P.W.-1 - Antony Kitherian and P.W.-2 - Anulappan Kanakku were with the deceased at that time. One Babu Susai, P.W.-3 was also stated by the prosecution to be present at that time. The appellant and his co-accused came there. According to the prosecution case, they used to purchase entire catch of fish from fishermen and sell them in retail market. A day prior to the occurrence, they had purchased fish at the rate of Rs. 33/- per fish from the deceased. On the day of occurrence, however, when the appellant and his co-accused came there, they offered to purchase fish at the rate of Rs. 15/- per fish. Deceased did not agree to sell at that rate and appears to have got angry and enraged on ...2/-

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being offered such a low price, particularly when on the previous evening the appellant had purchased fish at the rate of Rs. 33/- per fish. The appellant is alleged to have told the deceased and his companions that since they have been buying the fish, they would take it on that day also but the deceased told them that he would not sell fish at Rs. 15/- per fish and bent down to collect the spread of fish. At this juncture co-accused came and caught hold of the deceased when the appellant, inflicted two cut wounds on the parietal region of the deceased with M.O.-1 - Thirukai Aruval. The deceased on receipt of the injuries was in the process of falling down, when P.W.-1 and P.W.-2 held him. The appellant and his co-accused ran away from the place and while running away, they threw away the weapon- M.O.-1, with which the appellant had assaulted the deceased. While P.W.-2 was helping the injured and tying his wounds, P.W.-1 went to the Post Office and requested Post Master - C.W.-1 to telephone for a taxi in order to take the victim to the hospital. The taxi later on arrived in which the deceased along with P.W.-1 and P.W.-2 went to the hospital via the house of the deceased. First Information Report Ex. P-13 was3/-

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lodged at the police station and investigation was taken in hand. After completion of investigation, both accused were sent up for trial. The trial court acquitted the co-accused of the appellant not by disbelieving the role assigned to co-accused but on an inference drawn that his role as spelt out by the prosecution was not meant to assist the appellant to commit the crime. The appellant was, however, convicted for an offence under Section 302 IPC and sentenced to undergo life imprisonment. The State did not file any appeal against acquittal of the co-accused. The appellant filed an appeal against his conviction and sentence which was dismissed by the High Court vide judgment dated 9th February, 1999, impugned before us. By special leave, the appellant is before us.

With the assistance of Mr. V.S. Kotwal, learned Senior counsel appearing for the appellant, we have perused the judgment of the trial court as well as of the High Court and have also independently analysed the evidence of eye-witnesses P.W.-1 and P.W.-2, as also of court witness - C.W.-1, besides
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medical evidence and the testimony of the investigating officer. Our independent analysis of the evidence of P.W.-1 and P.W.-2 shows that they are trustworthy and reliable witnesses. The High Court, after taking into account medical evidence and other material on record, opined that evidence of P.W.-1 and P.W.-2 was cogent and consistent and fully corroborated by the averments made in the FIR lodged by P.W.-1 with P.W.-11. After a detailed discussion, the High Court opined as follows:

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"Therefore, there is no difficulty for this Court to come to the conclusion that the ocular evidence given by P.Ws. 1 and 2 is quite reliable and acceptable, especially when the overt acts attributed to the appellants on the deceased as spoken to by P.Ws. 1 and 2 is fully corroborated by the medical evidence adduced by P.W.4."

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In our opinion, the conclusion arrived at by the High Court is well merited and is based on proper appreciation of evidence. A perusal of the statements of P.W.-1 and P.W.-2 goes to show that the details of the occurrence and part played by the appellant in the

commission of crime have been very clearly spelt out.
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Despite sustained cross-examination, their testimony has stood the test of scrutiny. Though much was tried to be said of the fact that High Court had not considered, much less discussed the statement of the Post Master - C.W.-1, but with a view to satisfy our judicial conscience, we have gone through the statement of the Post Master, C.W.-1 with the assistance of Mr. V S Kotwal, learned Senior counsel appearing for the appellant. In our opinion, the statement of the Post Master, who admittedly is related both to the accused and the deceased, does not create any dent on the otherwise reliable testimony of P.W.-1 and P.W.-2 on the prosecution case. Their testimony receives ample support from medical evidence provided by P.W.-4 - Dr. Manohar P. Chandrasekaran. Both the trial court and the High Court have properly appreciated the evidence. We find no infirmity in the order of the High Court. The prosecution has been successful in establishing the case against the appellant beyond a reasonable doubt.

Faced with the state of evidence on the record, Mr. V S Kotwal, learned Senior counsel submitted that the possibility that two injuries
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suffered on the same side on the face and the head by the deceased could be the result of the one blow only and therefore, the offence would not fall under Section 302 IPC. We cannot agree. Leaving aside the nature of the serious injuries, which proved fatal, no such suggestion was put to the doctor and it is not for us to conjecturise, more particularly, when we find the manner of assault, as given by P.W.-1 and P.W.-2, to be trustworthy and receiving ample corroboration from the medical evidence.

For what we have said above, we find that there is no merit in this appeal which fails and is, hereby, dismissed.

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.....CJI

.....J.
(R. C. LAHOTI)

.....J.
(ASHOK BHAN)

New Delhi
September 26, 2001.