

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.1800 OF 2011

KALIRAJ

... APPELLANT

Versus

THE STATE REP. BY INSPECTOR OF POLICE & ORS.

... RESPONDENTS

O R D E R

1. This appeal is directed against the judgment and order dated 10.02.2011 passed by the High Court of Madras at Madurai Bench in Criminal Appeal No.339 of 2004 whereby the judgment and order of the Sessions Court which acquitted the appellant along with the other accused was reversed by convicting him alone under Section 326 and 302 of the Indian Penal Code, 1860 (for short, 'IPC') and sentenced to undergo one year rigorous imprisonment for offence under Section 326 IPC and also sentenced to life imprisonment for offence under Section 302 IPC. Both the sentences to run concurrently.

2. On the basis of Ex. P.1- complaint, a case - Crime No.245 of 2001 was registered against the appellant for the offences under Sections 341, 307 and 302 I.P.C.

3. The case of the prosecution in a nutshell is that Accused Nos.1 to 3 are brothers and Accused No.4 is a junior paternal uncle of Accused Nos.1 to 3. On 13.11.2001 at about 08.30 p.m., P.W.1 in

order to go to his place was travelling in a Mini Bus. The deceased - Thangapandian and others were also traveling in the same mini bus. At that time, a quarrel arose among the deceased and the mini bus conductor regarding getting ticket. At that time, the first accused, who was owner of the mini bus, came and rebuked the deceased. The deceased and the first accused got down from the bus and they quarreled. The third accused also came to the scene of occurrence with sickle and he attempted to attack the deceased. P.W.1 was attacked by Accused No.3 with sickle on the back of his head and again, he was attacked on his left hand. P.W.1 started to run and after climbing the college gate, he fell inside. While the other co-accused caught hold of the deceased, the third accused indiscriminately attacked the deceased with sickle and made several cuts all over his body. The accused ran away from the scene of occurrence.

4. The Trial Court doubted the credibility of the evidence of eye witnesses - P.W. 1 to P.W. 3. The recovery was also doubted and the fact that some other witnesses turned hostile was taken note of by the Trial Court. The Trial Court found that the prosecution has failed to prove its case beyond all reasonable doubt and acquitted all the accused from all charges.

5. On an appeal being filed by the State, the High Court, as stated above, by the impugned order dismissed the Criminal Appeal in respect of A-1, A-2 and A-4 and the same is allowed in respect of A-3 and he is convicted under Sections 326 and 302 I.P.C., and sentenced to undergo one year rigorous imprisonment for the offence

under Section 326 I.P.C and also to undergo life imprisonment for the offence under Section 302 I.P.C.

6. Learned counsel appearing on behalf of the appellant vehemently contended that the Trial Court took into consideration the various infirmities in the evidence adduced on behalf of the prosecution. The Appellate Court while exercising the powers under Section 378 of the Code of Criminal Procedure, 1973 is expected to give reasons for differing with the views of the Trial Court. If two views are possible then the view taken by the Trial Court does not call for interference particularly in cases of appeal against the order of acquittal. The Trial Court took into consideration the demeanour of the witnesses while rendering the benefit of doubt. The findings rendered with respect to recovery and the discrepancies in the evidence of P.W. 1 have not been taken note of. Learned counsel for the appellant placed reliance on the decisions rendered by this Court in Gorle S.Naidu vs. State of A.P. & Ors., (2003) 12 SCC 449 and Ravi Sharma vs. State (Government of NCT of Delhi) and another, (2022) 8 SCC 536.

7. *Per contra*, learned counsel for the respondent - State submits that the High Court in the impugned judgment rightly placed reliance upon the evidence of P.W.1 read with Exhibits P-4 and P-8 and the serology report, which finds the existence of same blood group between the deceased and the weapon recovered. In such view of the matter, there is no interference which is warranted.

8. Though we find considerable force in the submission made by learned counsel for the appellant with respect to the infirmities

in the case of prosecution, we are called upon to test the testimony of P.W.1 being the star and sterling witness. This witness is not a mere eye witness but also an injured witness. He is not an interested witness to the extent of expecting a conviction against the appellant.

9. We have also perused the Medical Report pertaining to P.W.1 and the statement of doctor. The doctor has clearly deposed that injury Nos.1 and 2 suffered by P.W.1 are cut injuries. The High Court in the impugned order has correctly taken note of the aforesaid factum and the fact that the prosecution witnesses brought both P.W.1 and the deceased to the hospital as could be seen from Exhibits P-4 and P-8. The postmortem report pertaining to the deceased also lend credence to the prosecution version. The deceased suffered multiple injuries. The High Court has correctly distinguished the case of the prosecution against Accused No.1, Accused No.2 and Accused No.4 as against the appellant. The presence of P.W.2 at the place of occurrence having been doubted was duly taken note of by the High Court while acquitting the other accused persons. There is no difficulty in appreciating the proposition of law in the judgments relied upon by the learned counsel for the appellant, as cited above. As we are satisfied with the reasoning of the High Court, and after perusing the entire records placed before us, we find no reason to allow this appeal, which is, accordingly, dismissed.

10. However, taking into consideration the fact that the appellant is stated to have completed 10 years' of actual imprisonment, we

direct the respondent - State to consider his case for pre-mature release, if he is otherwise qualified for the same. The appropriate action shall be taken by the respondent - State within a period of three months from today.

.....J.
(M M.SUNDRESH)

.....J.
(J.B. PARDIWALA)

NEW DELHI;
AUGUST 31, 2023.

ITEM NO.102

COURT NO.14

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No(s).1800/2011

KALIRAJ

Appellant(s)

VERSUS

THE STATE REP. BYINSPECTOR OF POLICE & ORS.

Respondent(s)

Date : 31-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. P. V. Yogeswaran, AOR
Mr. Ashish Kumar Upadhyay, Adv.
Mr. V. Kandha Prabhu, Adv.
Mr. V. Sibi Kargil, Adv.
Ms. Maitri Goal, Adv.
Mr. Harsh Chowdhury, Adv.
Mr. Sachin Kumar Verma, Adv.
Mr. N. B. V. Srinivasa Reddy, Adv.

For Respondent(s) Dr. Joseph Aristotle S., AOR
Ms. Vaidehi Rastogi, Adv.
Ms. Shubhi Bhardwaj, Adv.

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

The appeal is dismissed in terms of the signed order.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR(RAM SUBHAG SINGH)
COURT MASTER (NSH)

(Signed order is placed on the file)