

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). 1103 OF 2005

JAYAKUMAR

Appellant (s)

VERSUS

STATE REP.BY INSPECTOR OF POLICE & ORS.

Respondent(s)

(With office report)

WITH

CRIMINAL APPEAL NO. 1104/2005

(with appln.(s) for bail and with office report)

CRIMINAL APPEAL NO. 1105/2005

(With appln.(s) for exemption from filing C/C of the impugned judgment and with office report)

Date: 31/10/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. K.K. Mani, Adv.

Mr. K.B. Sandeep, Adv.

Mr. V.J. Francis, Adv.

Mr. A. Radhakrishnan, Adv.

Mr. Anupam Mishra, Adv.

Ms. Ritu Bhardwaj, Adv.

For Respondent(s) Mr. R. Venkataramani, Sr. Av.

Mr. V.G. Pragasam, Adv.

Mr. S. Vallinayagam, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals are allowed in terms of the signed order. The convictions and sentences awarded against the appellants are set aside and they are acquitted of the charges. The appellants of these Appeals, who are in custody, are directed to be set at liberty forthwith, if not required in connection with any other case.

(Rajesh Dham)

Court Master

(Khushi Ram)

Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 1103 OF 2005

JAYAKUMAR

Appellant (s)

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STATE REP. BY INSPECTOR OF POLICE & ORS.

Respondent(s)

WITH

CRIMINAL APPEAL NO. 1104 OF 2005

CRIMINAL APPEAL NO. 1105 OF 2005

O R D E R

Heard the parties.

The five appellants in this appeals along with accused Chera @ Charan, Balu @ Balan, Ilamannan and Ravi @ Oolai Ravi were charge sheeted and as accused Ilamannan and Ravi @ Oolai Ravi were absconders their trial was separated. The appellants herein and accused Chera @ Charan and Balu @ Balan were tried and, by judgment rendered by the trial court, accused Chera @ Charan and Balu @ Balan were acquitted, whereas the five appellants of these appeals were convicted under Section 302/149 of the Indian Penal Code (hereinafter referred to as 'IPC") and sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/- each and in default to undergo further imprisonment for a period of six months. They were further convicted under Sections 143, 147 and 336 IPC and sentenced to undergo rigorous imprisonment for a period of six months, two years and three months respectively. So far as the appellants of these appeals are concerned, they were also convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for a period of three years. All the sentences

were, however, ordered to run concurrently. Against the order of acquittal ,

no appeal was filed by the State before the High Court. Whereas in appeal 1

filed by the appellants herein their convictions under Sections 143 and 147

IPC have been set aside but their other convictions and sentences have been

upheld. Hence, these appeals by special leave.

In the present case, there were four eye witnesses, namely,

Manimozhi (PW 1), Karuppu Balu (PW 3), Valliammal @ Khadeja Bee (PW 4)

and Syed (PW 5) and out of them PW 3 and PW 5 were declared hostile. As

such the convictions of the appellants have been based upon the evidence of

PW 1 and PW 4.

PW 1 is nobody else than the informant himself and is brother of the

deceased. In the First Information Report (FIR) he has disclosed the names

of the two acquitted accused persons and the two other accused persons

whose trial has been separated. So far as the appellants herein are

concerned, name of none of them has been disclosed by PW 1 in the FIR.

This witness in his substantive evidence in Court has specifically admitted

that he knew the appellants by name before the date of the alleged occurrence but has not assigned any reason whatsoever as to why he did not disclose their names in the FIR. This being the position, it is not possible to place reliance upon the evidence of this witness in relation to the appellants.

The other eye witness upon whom reliance has been placed is PW 4

who is nobody else than the aunt of the deceased. During the course of the

cross examination she admitted in her evidence that when she heard the

sound she was in the first floor of her house and her house and the place

where the deceased was attacked were intervened by several houses. She has

specifically stated that when she arrived at the place of occurrence where the

body of the deceased was lying that place was intervened by nine or ten

houses. A sketch map prepared by the police (Ex. P-19) shows that her

house was far away from the place where the deceased was assaulted and in

the street light which was also far away from her house, as such, it was not

possible for her to identify the accused persons. From a bare perusal of her

evidence, it becomes highly doubtful that this witness could have identified

the appellants in the street light. This being the position, we are of the view that it is not safe to place reliance upon the evidence of this witness as well.

For the foregoing reasons, we are of the view that the prosecution

has failed to prove its case beyond reasonable doubt and the High Court was

not justified in upholding convictions of the appellants herein.

Accordingly, the Appeals are allowed, the convictions and sentences

awarded against the appellants are set aside and they are acquitted of the

charges. The appellants of these Appeals, who are in custody, are directed to

be set at liberty forthwith, if not required in connection with any other case.

..J.

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(B.N. AGRAWAL)

..J.

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(P.P. NAOLEKAR)

NEW DELHI;

OCTOBER 31, 2006.