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Cr1.A.No. 1191 OF 1997
ITEM No.101

Court No.8

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.1191 of 1997

Palaniswamy Appellant.

VERSUS

State of Tamil Nadu Respondent.

(With office report)

Date : 24/03/2004: This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)Mr. S. Sivasubramaniam, Sr. Adv.
Mr. T. Raja, Adv.

For Respondent (s)
Mr. Subramonium Prasad, Adv.
Mr. R.S. Srivastava, Adv.

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

Mr. S. Sivasubramaniam, learned senior counsel for the appellant resumed his arguments at 10.30 a.m. and concluded at 12.15 p.m. Thereafter Mr. R. S. Srivastava, learned counsel for the respondent started his arguments and concluded at 12.35 p.m. The appeal is disposed of in terms of the signed order.

(R.K. DHAWAN) (VEERA VERMA)
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1191 OF 1997

Palaniswamy.... Appellant.

Versus

State of Tamil Nadu.... Respondent.

O R D E R

The appellant was tried by the Court of Sessions, Coimbatore for the offence punishable under Section 302 IPC and also for the offence punishable under Sections 324 and 323 IPC for having caused the death of Manickam. The Sessions Court acquitted the appellant. Aggrieved by the same, the State preferred an appeal before the High Court. The wife of the deceased Manickam also filed an appeal by the leave of the court. The Division Bench of the High Court found the appellant guilty of the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life. That judgment is under challenge before us. The appellant Palaniswamy and deceased Manickam married sisters. The deceased Manickam was an employee of Shakti Textile Mills at Pollachi. The appellant was an
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employee at South India Viscosed at Sirumugai. On the date of the incident i.e. on 27th November, 1985, the appellant went on a moped to the main gate of Shakti Textile Mills and appellant was having a bag wherein it is alleged that he had kept an iron rod, sickle, knife and some chilly powder. After parking the moped, he waited near a tamarind tree near main gate of the mill and at about 6.55 a.m. deceased Manickam came there accompanied by his colleague Thangavelu. On seeing the accused standing there deceased greeted him and asked why he had come there. Thangavelu on seeing the appellant and deceased talking to each other, went ahead. The appellant then told the deceased that he was being unduly preferred and respected by father-in-law and he was not even getting proper treatment from the members of family and so saying he stabbed the deceased. Further case of the prosecution is that Pws.5 and 6 came near the accused and over powered and snatched the knife from the appellant. PW-5 took the accused to the nearest police station where PW 10 Station House Officer recorded the statement of PW-5 and registered the case against the appellant and he was taken into custody. The sub-inspector of police took over the investigation and later filed charge sheet. The postmortem examination was conducted by PW-11 the Civil Assistant Surgeon, Government Hospital, Pollachi and he found stab wounds on the body of the deceased.

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On the side of the prosecution, four witnesses were examined as eye witnesses i.e. Pws. 3 to 6. Out of them Pws.5 and 6 turned hostile and did not support prosecution. PW-3 is having a tailoring shop on the eastern side of the mill. He stated that at about 6 - 6.30 a.m. he went to the shop of PW-5 to take tea and while in the tea shop he saw the appellant coming there in a moped from the western side, he parked the vehicle and he was having cloth bag with him and stood near a tamarind tree. At that time deceased Manickam and Thangavelu came in cycle and on seeing appellant Manickam got down from the cycle. PW-3 also deposed gist of the conversation alleged to have taken place between the appellant and deceased. PW-3 further deposed he saw the appellant stabbing the deceased and the appellant was later over powered by Pws.5 and 6 and PW-5 took him to the police station. PW-4 also gave the similar evidence. The Sessions Court disbelieved these two witnesses on the ground that these witnesses could not have been present at the time of the incident. The High Court re-appreciated the evidence and held that these witnesses had given reasonable explanation for being present at the time of the incident and the evidence of these two witnesses was considered in detail and cogent reasons have been given to believe these eye witnesses. We do not think that the High Court

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committed any mistake in the manner in which their evidence has been appreciated. The defence of the accused that at the time of the incident he was away in father-in-law's house and heard that there was some riot in front of the Shakti Textile Mills and as he came to know that Manickam sustained some injuries and he suddenly proceeded to that place, when he came to the place of incident and the riot was being continued and he also sustained some injuries and he was forcibly taken to the police station. No defence evidence was adduced. We have considered the evidence of PW-3 and PW-4. Both these witnesses are having shops near to the gate of Shakti Textile Mills. Incident happened at a time when the workers of mill started coming to the mill. PW-3 deposed that everyday he comes to the tea shop at 6 - 6.30 a.m. for taking tea. PW-4 also has given reasonable explanation for being present at the time of incident.

The counsel for the appellant contended that even though the accused had not set up a case of private defence, evidence adduced by the prosecution indicated that there was scuffle between the appellant and deceased and that the appellant sustained injuries. The counsel for the appellant contended that there could have been a possible scuffle between the accused and the deceased and the appellant must

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have sustained injuries at the hands of the deceased. It is pertinent to note that the prosecution did not allege that the appellant in fact sustained injuries. The appellant was examined by Dr. Jayalakshmi (PW-12) and the wound certificate shows that he had sustained four injuries, out of them one is linear cut injury 3 c.ms. x 2 m.m. x 2 m.m. in diameter over the ulnar border of left hand. Doctor also stated that the cut injuries must have been caused by sharp edged weapon. The Sessions Court noticed that the prosecution did not admit the fact that appellant sustained injuries and that was also taken as one of the main reasons for acquitting the accused. We do not think that the suggestion made by the appellant's counsel that there could have been scuffle between the appellant and the deceased and in that scuffle appellant must have sustained injuries is far fetched or highly improbable. Prosecution evidence shows that the appellant was having grudge against the deceased and he possibly came there to cause some injuries to the deceased. Having regard to the facts and evidence adduced in this case, there must have been a scuffle between the appellant and the deceased and in that incident the appellant must have caused bodily injuries to the deceased. Therefore, the offence would only come under Section 304 Part I of I.P.C.

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In the result, we set aside his conviction under Section 302 IPC and convict him for the offence under Section 304 Part I IPC and sentence him for imprisonment for a period of five years. The appellant, who is on bail, is directed to surrender to his bail bonds within three weeks failing which the Sessions Court shall take appropriate steps for taking him into custody to undergo remaining period of sentence. The appeal is disposed of accordingly.

.....J
(K.G. BALAKRISHNAN)

.....J
(B.N. SRIKRISHNA)

NEW DELHI;
MARCH 24, 2004