

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 254 OF 2011

ETTI @ EBINESAR

APPELLANT (S)

VERSUS

STATE REP. BY INSPECTOR
OF POLICE

RESPONDENT (S)

O R D E R

This appeal challenges the decision dated 25.03.2010 rendered by the High Court of Madras at Madurai Bench in Criminal Appeal No. 31 of 2004 affirming the conviction and sentence of the appellant, original Accused No. 4 under Section 302 of IPC.

According to the prosecution, the First Information Report was lodged at about 03:15 P.M. on 01.09.1998 by PW-1 viz Moosa alias Manuel Moosa. The reporting made by PW-1 was to the following effect :

"Sir, I am residing at door number 27 Alan Street, Palakari, Trichirapalli along with my family. There are three siblings to me. Aran is the eldest. Baltic is the second and I am the third. We are all residing at Alan street Palakari. I am working as loading mistry in good shed for the last 13 years. My elder brother Baltic is working as operator in I.O.C. Robert son of my elder brother Arry was murdered about 5 months back near Edmalaipatty by the men of Pitchaimuthu and since then, there was enmity between Pitchaimuthu group and our family. Today, on 1.9.1998, Karunakaran alias Solomon son of my elder brother, after taking lunch at his home came to good shed at about 2.15 o'clock in the afternoon for selling lottery tickets. On reaching here, he told me "uncle, I found a

car parked on the road and in that car, rowdy Pitchaimuthu, Saravanan son of Ramu, and Manoharan are sitting in the car. They have definitely come to murder me. You give me your bicycle and he took my bicycle and sent the boy to find out the car parked on the road. Boy went for some distance in the bicycle and the car has left. At that time from behind the Pillaiar temple of the goods shed, Lalkudi Gosin came with an aruval in his hand came to hack Karunakaran. Karunakaran who was sitting in the telephone booth got up and started running towards east. It was about 2.30 o'clock in the afternoon. At that time, Madavan of Maraikanur and Eety came from the east carrying n arunval with them in their hands and they came to hack Karunakaran. Madvan with the aruval in his hand gave hack blows on the right rib and right shoulder of Karunakaran. Eety with the aruval in his hand aimed to give a hack blow on the head of Karunakaran, Karunakaran avoided it with his left hand. Eety gave repeated blows on the left hand of Karunakaran with the aruval in his hand. I shouted "do not hack him, do not hack him" and ran after them. Gosin then turned back and showed the aruval to me and told that "if you come near to me, you would also meet the same fate". I stopped there. When Karunakaran was hacked by Madvan and Eeity, Karunakaran ran towards west, Kosin hacked Karunakaran with aruval on the shoulder of Karunakaran and Karunakaran received the hack and Karunakaran ran towards telephone booth fell down. After he fell down, Madavan, Eety and Kosin all the three persons chased Karunakaran and Kosin with the aruval in his hand hacked on the right side of the neck of Karunakaran and the blow fell on the right side of the neck of Karunakaran. After some time, Karunakaran died. I was scared and I remained close to the wall of the said room and witnessed the incident. Thereafter, Madavan, Eity and Kosin have threatened four or five load men with the aruvals in their hands and entered into the goods shed and ran towards south and entered into the main road and entered into the car which was standing in the main road in which

Pitchaimuthu, Saravanan and Manoharan were sitting inside the car and all the three persons have escaped. I request to action against the persons who have murdered Karunakaran alias Solomon."

Pursuant to this reporting, case crime no. 299/98 punishable under Sections 302, 506(ii) of the IPC was registered and the investigation commenced. PW-16 viz Mandiramorthy, Inspector of Police, visited the place of occurrence at about 04:00 P.M. and conducted inquest and thereafter sent the dead body for autopsy. The postmortem was conducted by PW-10 Dr. Anbalagan on 02.09.1998 who found following injuries.

"1. An incised wound over right side of neck 20 X 10 X 10cm starts from right angle of mouth and ends at occipital region cutting all structures (ie) bones, muscle, cervical spine, spinal cord and vessels.

2. A curved incised wound over left clavicle region 6 X 3 X 3cm.

3. An incised wound 2 X 1 X 1cm close the wound 2.

4. Incised wound over middle of left FA 10 X 7 X 3cm.

7. Incised wound over Distal 1/3 of left FA 5 X 3 X 2cm cutting muscles and ulna.

8. Incised wound obliquely across wrist and palm left 5 X 2 X 2cm cutting muscles, vessels carpal and 1st mc bones.

7. Incised wound horizontally across the palm left 5 X 2 X 2cm cutting muscles and dislocating Vth mcp joint.

6. Incised wound left Ring finger 1 X 1 X skin deep.

9. Stab wound over left elbow 2 X 1 X 1cm.

13. Incised wound over back* of right shoulder 3 X 1 X muscle deep.

14. Stab wound over Right axilla 3 X 1 X 3cm piercing the skin and coming out posteriorly 2 X 1cm.

15. Incised wound middle of Right FA 5 X 3 X 3cm."

After completing investigation, five persons, viz Madhavan, Saravanan, Manohar, Etti alias Ebinesar, Sivakumar were tried in the Court of Sessions, Tiruchirapalli for having committed offence punishable under Sections 147, 148, 302 read with 149 and 506(ii) of IPC. The prosecution examined as many as sixteen witnesses. PW-1 to PW-5 were stated to be eye-witnesses of the occurrence. PW-1 the complainant, in his cross-examination stated as under :

"I directly do not know who assaulted Karunakaran. When I saw Karunakaran for the first time, he was dead. I have not told to anybody regarding the fact that who were involved in the murder. I have seen accused No. 2 but I have not seen other accused. I have seen all other accused only during the evidence. I do not know the details of their name, father's name, and address regarding other accused except that of accused 2."

PW-1 thus did not support the case of the prosecution. Similarly, PW-3, PW-4 and PW-5 also did not support the prosecution version. The only person on whose testimony the prosecution case could now rely, was PW-2 who is the father of the deceased.

PW-2 in his examination in chief, undoubtedly, stated that he had witnessed the occurrence. His version was as under :

"I am residing at Ananda Street, Tirichirapalli. I am working as operator in Indian Oils Corporation Ltd. Karunakaran alias Solomn was my son. He was selling lottery tickets. I know all the accused. Robert son of my younger brother Aari was murdered by the gang of Pitchaimuthu about 5 months prior to the occurrence of this incident. Therefore, there was previous enmity between us and them.

On 1.9.1998 at about 2.30 o'clock in the afternoon, I was sitting near the good shed telephone booth. At that time I did not even cross the gate and at that I heard the shout "do not hack me, do not hack me". I rushed there and found my son was being hacked. Madhavan, Eettu and Muni were hacking my son. My son died. All the three ran away. Inspector interrogated me."

Relying on the prosecution case mainly coming through the deposition of PW-2, the Trial Court convicted and sentenced Accused No. 1, 4 and 5 for the offence punishable under Section 302 read with Section 34 IPC, while acquitting Accused Nos. 2 and 3 of the offence, with which they were charged. The Trial Court sentenced accused nos. 1, 4 and 5 to undergo life imprisonment for the substantive charge under Section 302 coupled with other sentences under subsidiary charges.

The convicted accused, being aggrieved, filed Criminal Appeal No. 31 of 2004 in the High Court which came to be disposed of by judgment and order under appeal. The High Court acquitted original Accused No.5 of all the charges but affirmed the conviction and sentence imposed on Accused Nos. 1 and 4. The testimony of PW-2 was found by the High Court to be believable and trustworthy. Relying on his version, the High Court found that the case of prosecution was proved as against Accused Nos. 1 and 4. We are informed at the Bar that Accused No. 1 has since then been absconding and did not challenge the judgment of conviction and sentence. However, the appellant viz A-4, has preferred the present appeal.

We have heard the learned counsel and gone through the record.

The information given by PW-1 gives graphic description of the manner in which the incident occurred. It also mentions that during the course of the incident, PW-1 had come forward to help the deceased, who was stopped by threats given by the accused. At no stage, the narration referred to the presence of PW-2 or the fact that the PW-2 had arrived at the scene of occurrence at any stage. In his examination in chief, PW-2 also does not state as to what he did soon after the incident. It appears inconsistent and incongruent for a father not to have taken any steps either to ward off the assailants or to approach anyone for help or even to see that the son was given immediate medical attention. Additionally, in his examination in chief, PW-7 had stated that at about 02:30 P.M. he heard voices and therefore went outside and saw one person lying in telephone booth in the pool of blood. This witness also does not refer to the presence of PW-2.

In the circumstances, it is highly doubtful that PW-2 was present when the occurrence actually took place or that he had witnessed the incident. Consequently, we cannot place complete reliance on the testimony of PW-2 and have to see whether there is any other substantive evidence or material. We are, therefore, left with PW-1 whose version, as stated in the cross-examination, speaks in completely different tone. In the circumstances, it cannot be said that the case of the prosecution has been proved as against the appellant beyond reasonable doubt.

We, therefore, allow this appeal, set aside the judgment and orders of conviction and sentence recorded by the Courts below against the appellant. The appellant is acquitted of all the charges. He be set at liberty unless his presence is required in any other case.

.....J.
(V. GOPALA GOWDA)

.....J.
(UDAY UMESH LALIT)

NEW DELHI,
SEPTEMBER 22, 2016

ITEM NO.106

COURT NO.8

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 S

Criminal Appeal No(s). 254/2011

ETTI @ EBINESAR

Appellant(s)

VERSUS

STATE REP. BY INSPECTOR OF POLICE

Respondent(s)

(With office report)

Date : 22/09/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE UDAY UMESH LALITFor Appellant(s) Mr. Thomas Franklin Caesar, Adv.
Mr. Vijendra Kasana, Adv.
Ms. M. Venmani, Adv.
Mr. S. Gowthaman, Adv.For Respondent(s) Mr. M. Yogesh Kanna, Adv.
Ms. S. Nithya, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the Signed Order.

(RASHI GUPTA)
SR. P. A.(MALA KUMARI SHARMA)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]