

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s).1957-1958 of 2010

AJIKUMAR @ AJI & ORS.

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

WITH

CRIMINAL APPEAL NO.195 of 2013

O R D E R

Ajit Kumar @ Aji (accused no.1), Vinu (accused no.6), Biju (accused no.2) and Suku @ Balu (accused no.4) are the appellants in Criminal Appeal Nos.1957-1958 of 2010 AND Saju (accused no.3) is appellant in Criminal Appeal No.195 of 2013. All the accused stand convicted under Sections 120B, 143, 147, 148, 452, 436, 427, 324, 302 and 307 r/w Section 149 of the Indian Penal Code for causing injuries to PW-1, Sisupalan @ Kannan, and causing murder of two persons, Sudarsanan (Gopalan) and Santhosh (Chandran).

Case of the prosecution is that in the night of 22.07.1992 all the five accused along with others (in all 20 who were put to trial) formed unlawful assembly and mounted an assault on the complainant party. PW-1 came out of the house after locking his house and walked a short distance through the eastern way towards the main road. Seeing the accused, he

rushed back to his courtyard. He was assaulted by accused no.1 and accused no.4 with the swords. He caught hold of the said swords and sustained injuries in the inner side of his both palms. Thereafter, he ran through the lane on the northern side of his house and came to the road. He found Sudarsanan, Santhosh and PW-7, Bahuleyan, standing on the road in front of the Sree Durga Theatre. He told them that he was assaulted by the accused and asked them to run away and cautioned them not to take that way. He then took shelter in a thatched shed situated near the theatre compound and found the accused chasing Sudarsanan, Santhosh and PW-7. The accused then assaulted Sudarsanan and Santhosh by using deadly weapons, as a result of which they fell down in the theatre compound. Thereafter accused ran towards the house of PW-1 and committed mischief by fire and damaged the house and returned to the theatre. The accused again attacked Sudarsanan and Santhosh and then left the compound. Sudarsanan and Santhosh were taken to the medical college hospital by the persons assembled there but both of them succumbed to their injuries on their way to hospital. After the first attack PW-1 came near Sudarsanan and Santhosh but seeing the accused again coming towards theatre compound escaped and went to the medical college hospital and got admitted there. His statement was recorded by the Circle Inspector of the Police, PW-30, on the next day at 8 a.m. which was treated as F.I.R.

We have heard learned counsel for the parties and perused the records.

We find that in all 20 accused were put to trial but since only 7 were identified, 13 were acquitted by the trial court. In appeal, the High Court acquitted accused no.7, as his identity was in doubt, but upheld the conviction of the remaining 6. Out of 6, after the pronouncement of High Court Judgment, accused no.5, Suku @ Chhota Suku died. We are thus concerned with the remaining 5 accused.

We have gone through the testimonies of material witnesses, particularly, PW-1, PW-4, PW-5, PW-7, PW-8, PW-9 and PW-12. We find that version of PW-1, regarding fatal assault on Sudarshanan and Santhosh immediately after attack on PW-1, is not supported by any other witnesses. He claims to have met to PW-12 after the occurrence but PW-12 in his testimony does not narrate PW-1 having told him about the manner of assault on Sudarshanan and Santhosh. PW-7, PW-8 and PW-9 are said to be present on the spot but they also do not support the version as to how the said two persons were killed. If uncorroborated statement of PW-1 is to be accepted, the same has to inspire confidence. Apart from the fact that the version of PW-1 is not corroborated, the same is contradicted by other witnesses as well as circumstances. We find it difficult to believe that he witnessed the assault.

Learned counsel for the respondents submitted that main

evidence is of PW-1 which should be fully relied upon, particularly, when the same is supported by medical evidence and when the deceased suffered several injuries and presence of the accused has been established. It was further submitted that the accused had not given any explanation on their part. He also pointed out that PW-6, in his deposition, has stated that he was under fear from which it should be inferred that the other witnesses might also be under fear.

The fact remains that even if there is brutal murder, as revealed by the medical evidence, and even if the presence of accused is established along with other acquitted accused, in absence of reliable evidence, we do not find it safe and legally permissible to sustain their conviction for murder of Sudarsanan and Santhosh. Needless to say even if there is a grave suspicion, it cannot take the place of proof and also the burden of proof is entirely on the prosecution. If some of the witnesses were under fear, it cannot be a ground to hold that the accused are guilty, in absence of reliable evidence before the Court.

Accordingly, we set aside the conviction of the appellants under Section 302 I.P.C. for the murder of Sudarsanan and Santhosh but we uphold their conviction under Sections 307 r/w 149 I.P.C. for assault on PW-1. The accused are said to have been in custody for nearly 11 years. No further sentence is required to be awarded. They will stand sentenced for the

period already undergone by them and be set at liberty forthwith unless required in any other case.

The appeals are accordingly allowed.

.....J.
(ADARSH KUMAR GOEL)

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

New Delhi,
JANUARY 19, 2017.

ITEM NO.101
(Part-Heard)

COURT NO.11

SECTION IIB

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).1957-1958 of 2010

AJIKUMAR @ AJI & ORS.

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

(With appln.(s) for permission to file additional documents and office report)

WITH Criminal Appeal No. 195/2013 (With Office Report)

Date : 19/01/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. K. Rajeev, Adv.

For Respondent(s) Mr. K.N. Balgopal, Sr. Adv.
Mr. G. Prakash, Adv.
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.
Mr. Manu Srinath, Adv.
Mr. A.P. Mukundan, Adv.
Ms. Nitya Nambiar, Adv.

Mr. Ramesh Babu M. R., Adv.

UPON hearing the counsel the Court made the following

O R D E R

In terms of the signed order, the appeals are allowed:

"Accordingly, we set aside the conviction of the appellants under Section 302 I.P.C. for the murder of Sudarsanan and Santhosh but we uphold their conviction under Sections 307 r/w 149 I.P.C. for assault on PW-1. The accused are said to have been in custody for nearly 11 years. No further sentence is required to be awarded. They will stand sentenced for the period already undergone by them and be set at liberty forthwith unless required in any other case.

The appeals are accordingly allowed."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)