

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1055 OF 2007

ANIL KUMAR

.. APPELLANT(S)

vs.

STATE REP. BY INSPECTOR OF POLICE.. RESPONDENT(S)

O R D E R



This appeal by a solitary appellant arises out of the following facts:

On 11/8/1998 the deceased Ponnusamy boarded a van bearing No.TN-72-Z-9171 belonging to PW.7 in order to bring some fish from Tuticorin to his village Puliyanakkudi-PW.1 was the driver of the vehicle and PW.2 was its cleaner. As the van was on its way to Tuticorin the appellant Anil Kumar also boarded the van. It appears that at about 11.00 p.m. PW.1

was driving the vehicle whereas PW.2 was sleeping when some quarrel took place between the appellant and the deceased and consequent to the quarrel the appellant pushed the deceased out of the van and then ran away. As the deceased had not returned home till 16/8/1998 his wife PW.4 went in search of him but to no avail. Thereafter, Subramanian, a brother in law of the deceased, went to the police station and lodged a report and on its basis an FIR was registered. As the number of vehicle had been disclosed in the report, the police examined



the owner the driver, and the cleaner after the dead body had been found on 16/8/1998. Both the Pws in their statements under Sec.161 Cr.P.C.

narrated the story as given above. The dead body was also subjected to a post-mortem examination by the Doctor, PW.3 who found nine injuries thereon and opined that the death was due to multiple injuries to vital organs. He further opined that the death could have happened between 32-48 hours prior to the post-mortem examination. On the completion of the trial, the accused was charged under Sec.302 of the IPC and as he pleaded not guilty, he was brought to trial.

The learned Sessions Judge relying primarily on the evidence of



PW.2 (PW.1 having turned hostile), and PW.3 the Doctor and the recovery of the murder weapon, a knife, at the instance of the appellant, and the fact that the deceased and the appellant had been last seen together in the van, convicted the appellant for an offence under Sec.302 of the IPC and sentenced him to undergo imprisonment for life and a fine of Rs.2,000/-; in default, to undergo RI for a period of 2 years. This judgment has been affirmed by the High Court in appeal. The matter is before us by way of special leave.

Mr. Gireesh Kumar, the learned counsel for the appellant has raised several arguments during the hearing of the appeal. He has pointed out that as PW.1, the driver had

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turned hostile, the reliance of the Courts, though insignificant, on his



statement, to corroborate the evidence of PW.2, was not justified. He has also submitted that the evidence of PW.2 itself was ambivalent not only as to the actual incident but also on the question of the identity of the appellant and as such, could not be believed. He has further argued that as per the case of the prosecution, the murder had taken place on 11/8/1998 and the post mortem had been done in the afternoon on 17/8/1998 and as per the doctor's report, the death had occurred between 3-4 days prior to the post mortem, falsified the prosecution story as it

brought the date of murder to 13 or 14 August, 1998.

Mr. S.Thanjayan, learned counsel for the State has, however, supported the judgment of the trial Court and submitted that there was no reason whatsoever to disbelieve PW.2, who was a truly independent witness and bore no animosity with the appellant and none had even been suggested by the defence. He has further submitted that the minor discrepancy in his statement with regard to the date of the murder being either 10th August 1998 or 11th August 1998, could be attributed to a failure



in memory as his statement had been recorded more than four years after the incident.

We have heard learned counsel for the parties and gone through

the record. It is true that PW.2, does prima facie, appear to be an independent witness and there is not even the slightest suggestion from the defence that he was in any way inimical to the appellant. To our mind, however, this is not only the test in order to determine the veracity of a prosecution witness and an over view of the entire evidence has to be made. PW.2 belongs to village Puthukottai near Puliyangudi whereas the appellant belonged to village Sankarankoli and the villages are 16 kilometers apart though on the National Highway. This witness was



examined on 12th June, 2002, and in his examination in chief deposed that he knew the the deceased Ponnusamy and also the appellant. In cross examination, however, he toned down his categoric statement by stating that he did not know the name of the appellant and that he had come to know his name only on the previous date of hearing of the case. He further stated that he did not know the name of his father and had not told his name or that of his father to the police or anybody else. He also candidly admitted and that he had not even seen the appellant properly

before the last date of hearing and it was on that day and after he had been pointed out to him by the police that he had seen him properly. Undoubtedly an identification of an accused by a witness in Court for the first time is on the face of it

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weak evidence, but even if this evidence is tainted as the police had identified the appellant to the witness in Court, the very basis of the identification even in the Court becomes meaningless. It is also significant that as per the prosecution story the deceased had been done to death on the night of 11/8/1998 and his body had been thrown alongside the National Highway. It has come in the evidence of PW.7 the owner of the vehicle that he had informed the police on 12/8/1998 about the incident

and that the police had that very evening gone to that place on a routine check and had found no body. We find that this story itself does not inspire confidence for the simple reason that had the dead body had been thrown on the National Highway from a running vehicle it would have fallen at a very short distance therefrom and had the police actually made an attempt to inspect the place, there is no reason as to why the dead body could not have been found on the 12/8/1998, even assuming that the same was lying, as suggested, in a pit. We find that in the face of PW.2's



ambivalent, and certain evidence, and as no support can be taken from the statement of PW.1 the driver of the vehicle who had turned hostile and did not support the prosecution and denied the incident all together, the other ocular evidence too does not really advance the prosecution's case.

Some support could perhaps be found for the prosecution from the medical evidence. Pw.3 the Doctor deposed that at the time of the post mortem examination on 17/8/1998 that dead body was decomposed and crawling with maggots, the brain had decomposed and was in an oozing state and that death had occurred between 32-48 hours and as maggots were present death could have occurred even three days before the post mortem. We find that in this situation the incident could not have been



happened on 11/8/1998 and would have happened either on 13th or 14th August, 1998, making the presence of PW.2 unlikely. We also find that the doctor's statement finds full support from Modi's Medical jurisprudence and Toxicology Twenty-third Edition pages 438-442. On page 438 a table reveals that the maggots come onto the body between 39 to 43 hours on an average (although a longer and shorter period is also possible given certain variable factors). While dealing with the condition of the brain Modi says at page 440:

"(h) Adult Brain: The putrefaction of the adult brain initially begins at its base, and then proceeds to the upper surface. It is hastened if any injury to the brain or skull is present. The brain becomes soft and pulpy within 24 to 48 hours in summer, and becomes a liquid mass from three to four days."



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The inferences that emerge from the above discussion is that the medical evidence far from supporting the prosecution story destroys its very substratum.

We, therefore, find that the conviction of the appellant cannot be sustained.

The appeal is, accordingly, allowed, the judgment of the courts below are set aside and the appellant is acquitted of the offence for which he has been charged.

.....J.

(HARJIT SINGH BEDI)



.....J.

(J.M. PANCHAL)

New Delhi,
August 4, 2009.