

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1119 of 2008

KUMAR @ ARASAKUMAR

..... APPELLANT

VERSUS

**STATE REP. BY INSP. OF POLICE,
PONDICHERRY**

..... RESPONDENT

O R D E R

1. Shanthi PW 1 is the elder sister of Ramesh, the deceased, and Janki, PW2 is their mother. On 10th of July, 2001 at about 10:30 or 11:00a.m. when the deceased Ramesh was near the arrack shop in village Bommiyanpettai there was some dispute between him and A1 Gopal. At that time, Ramesh assaulted Gopal who in turn threatened him with dire consequences. This was also witnessed by PW 2 Janki. At about 8:00pm the same evening Ramesh was in his house, he developed a stomach pain on which PW 1 Shanti took him to the shop for getting a soda to drink. As they were proceeding to the shop Gopal came behind them, caught Ramesh by his neck with a towel and restrained him from going any

further and tried to drag him to away. PW 1 followed them and saw that the other five accused were also present. A village boy on seeing this ran home and informed PW 2 who followed him and reached the scene of the crime. Ramesh was ultimately dragged to the Victoria Nagar Crossing in front of Thirupathi provision store where A3 and A4 caught hold of his hands and A1 Gopal stabbed him in the chest and A2 Kumar took out a pen knife from his pocket and stabbed him in the flank. The noise that came about also attracted PW 6 Sarasu to the place of incident. The accused then ran away from the spot. The injured Ramesh was then taken to the Government Hospital Pondicherry by PW 1 where he was treated by the doctor. The doctor also informed the police through Exhibit P27 that he had been brought to the hospital in an injured condition and that five persons A1 Gopal, and four others had caused the injuries to him. On receipt of the note Exhibit P27 the Sub Inspector reached the place of incident and recorded the statement of PW 1 and on its basis a case under Sections 342 and 307 read with Section 34 IPC was registered. Ramesh subsequently died leading to a case of murder as well. All the accused were ultimately arrested and were brought to trial for offences punishable under Sections

302/148/149 of the IPC. The trial court relying on the evidence of PW 1 and 2 acquitted A6 but convicted the other accused. The matter was thereafter taken in appeal to the High Court by the accused who had been convicted and the High Court allowed the appeal of A3, A4 and A5 and dismissed the appeal of A1 Gopal and A2 Kumar on the murder charge but acquitted them of the offences under Sections 342 and 148 of the IPC. It is the admitted case that the Special Leave Petition filed by Gopal has been dismissed by this Court and as of today the only person who remains before us is Kumar A2.

2. The learned counsel for the appellant has argued that the High Court, having disbelieved the entire evidence with regard to the other accused, it was clear that PW 2 could not be said to be an eye-witness more particularly as her testimony found no support from the medical evidence.

3. Mr. Kanagaraj, learned Senior Counsel for the Union Territory, has however, supported the judgement of the High Court. It is true that the High Court has disbelieved the evidence of PW 2 as she had arrived at the scene after the incident and could not have been an eye witness. We have no doubt, however, that her evidence inspires full confidence. It has come in

evidence that when the doctor had sent the information to the police by Exhibit P27, the name of only A1 had been mentioned therein but the fact that there were other four accused had also been noted. Likewise, in the inquest report made soon after the FIR had been recorded, the name of A2 figures as one of the accused. It therefore appears that name of A2 had surfaced soon after the investigation had started subsequent to the registration of the FIR. Some doubt could have been created had the medical evidence not supported the ocular testimony. We have noticed that the judgment of the trial court and the High Court referred to the fact that the second injury attributed to the appellant had been caused in the right flank. The 'flank' as per the dictionary meaning is the portion of the body which is between the ribs and the hips. In other words as per the courts below the injury had been caused in the abdominal cavity on the right side. Mr. Kanagaraj, the learned Senior counsel for the respondent-Union Territory has, however, pointed out that this translation appears to be wrong inasmuch as that PW 2 had stated that the injury had been caused on the ribs. To assist us on this argument, we requested the learned counsel representing the parties as also some others who were conversant with the Tamil language and were

present in Court, to help us appreciate the evidence of PW 1. It was unanimously agreed that the evidence talks about the second injury attributed to the appellant was in the ribs and in the chest cavity. The translation made by the trial court as well as the High Court, therefore, finding that the injury was in abdominal area was not correct. We, therefore, find that the medical evidence supports the eye witness account of PW 1. We have absolutely no reason to interfere in the matter. The appeal is dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
APRIL 20, 2011.

JUDGMENT