

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1389 OF 2007

Jaisy @ Jayaseelan ... Appellant

Versus

State Rep. By Inspector of Police ... Respondent

ORDER

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellant is original accused no. 2. He was tried along with six other accused in the court of Additional District and Sessions Judge (Fast Track Court No.1) Chidambaram in Sessions Case No. 175 of 2004 inter alia for offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, "**the IPC**"). The

Sessions Court by judgment and order dated 25th July, 2005 acquitted original accused nos. 5 to 7 and convicted accused Nos. 1 to 4 under Sections 449, 341 and 302 read with 34 of the IPC. The appellant along with others carried appeals to the Madras High Court. By the impugned judgment and order dated 16.3.2007, the Madras High Court dismissed the said appeals. Hence this appeal by special leave.

2. Shortly stated the case of the prosecution is that pursuant to the criminal conspiracy hatched over a period of one week prior to 9.6.2002, at 10.00 a.m. on 9.6.2002, Sivakumar, Jayaseelan, Loghu and Lakshmanan (A1 to A4 respectively) trespassed into the office of the Chairman of the panchayat i.e. Senthil Kumar (PW-5) and they wrongfully restrained Ramesh (the deceased) and indiscriminately and fatally attacked him. In the course of the same transaction, A1 is stated to have caused hurt to Ravi (PW-2) with a dangerous weapon. In support of its case, the prosecution examined as many as 27 witnesses.

The accused denied the case, however, they did not lead any evidence.

3. Thiru Vinoba (PW-1) is the elder brother of the deceased. Tmt. Puratchimani (PW-6) is the younger sister of the deceased. Ravi, Ashok and Sundar (PW-2, PW-3 & PW-4 respectively) who were examined as eye witnesses, turned hostile. There is no dispute about the fact that this case has political overtones. The trial court as well as the High Court believed the evidence of PW-1 to the extent it implicates the appellant, A1, A3 and A4. The question is whether evidence of PW-1 can be relied upon to confirm the sentence awarded to the appellant.

4. Shri K.K. Mani, learned counsel for the appellant submitted that almost all the witnesses have turned hostile. He submitted that PW-1 claims to be an eye witness. Since he is the brother of the deceased, he is an interested witness. His evidence, therefore, needs corroboration.

Conviction cannot be based solely on his evidence. Learned counsel pointed out that the other eye witnesses PWs -2, 3 and 4 have turned hostile. Thus evidence of PW-1 is not corroborated. Learned counsel drew our attention to the evidence of PW-6, the younger sister of the deceased who took the deceased to the hospital. He submitted that in her cross-examination, she stated that the police came to the hospital in a jeep pursuant to the call made by the doctor. The police made inquiry with her. She gave her statement which was reduced into writing at 10.00 A.M. Learned counsel submitted that therefore, this statement was recorded prior to the recording of Ex.P1 i.e. the FIR which was recorded at 11.00 A.M. Learned counsel submitted that the statement of PW-6 should have been treated as FIR being the earliest statement recorded by the police. The prosecution has suppressed this statement. FIR (Ex. P1) is, therefore, a fabricated document. He submitted that the prosecution has suppressed the genesis of the case and, therefore, adverse inference needs to be drawn against it. In

support of this submission he relied on the judgment of this Court in **Marudanal Augusti** vs. **State of Kerala**¹.

5. Learned counsel for the State submitted that the impugned judgment and order needs no interference.

6. It is not possible for us to accept the submissions of learned counsel for the appellant. It is true that PWs-2, 3 and 4 who were examined as eye witnesses have turned hostile. But having carefully perused the evidence of PW-1, we feel that it can be safely relied upon so far as prosecution case against the appellant is concerned. It is true that being the brother of the deceased, PW-1 is an interested witness. However, on that ground his evidence cannot be discarded. As stated by this Court in **Sarwan Singh & Ors.** Vs. **State of Punjab**² and **Sucha Singh & Anr.** Vs. **State of Punjab**³, it is not the law that the evidence of an interested witness should be equated with that of a tainted witness

¹ (1980) 4 SCC 425

² (1976) 4 SCC 369

³ (2003) 7 SCC 643

or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration. This submission of the learned counsel is, therefore, rejected.

7. We are also unable to come to the conclusion that the prosecution has suppressed the statement of PW-6 and that the FIR (Ex. P1) is a fabricated document. The High Court has dealt with this point and recorded its finding that Ex. P1 was recorded prior in time and it is not a fabricated document. We concur with that finding. It is pertinent to note that PW-6 has stated in her evidence that she took the deceased to the hospital in an auto rickshaw and her elder

brother went to the police station and gave complaint. This indicates that the brother reached the police station prior to the recording of the statement of PW-6. Merely because PW-6 has stated in her evidence that her statement was recorded around 10.00 A.M, it cannot be concluded that her statement was prior to the FIR which was recorded at 11.00 A.M. It must be noted that PW-6 used the words "around 10.00 A.M." It appears to be an obvious error. It is also important to note that PW-6 is not an eye witness. In our opinion, this discrepancy is a minor discrepancy which does not have any adverse impact on the prosecution case. The judgment of this Court in **Marudanal Augusti** does not help the appellant's case. There, in the peculiar facts and circumstances of that case, this Court held that once FIR is held to be fabricated or brought into existence long after the occurrence, the entire prosecution case would collapse. No such conclusion can be drawn in this case. Therefore, **Marudanal Augusti** is not applicable to this case. No other point was urged by the learned counsel before us.

8. In the circumstances, we find no merit in the appeal.

The appeal is dismissed.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
NOVEMBER 23, 2011.