

[NON-REPORTABLE]

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

CRIMINAL APPEAL NO.605 OF 2007

SUBRAMANI & ANR.

...APPELLANTS

Versus

STATE REP. BY INSPECTOR OF POLICE

.....RESPONDENT

ORDER

HARJIT SINGH BEDI, J.

1. This appeal arises out of the following facts:

The deceased, Manoharan, was residing with his third wife PW-1 in Vendambadi Kudi Street. He was also claiming a share in the bank deposits left in the Cooperative Bank at Namakkal, by his aunt. This claim was opposed by A-1, his father, A-2 and A-3, the husbands of his sisters, A-4 son of A-2, A-5 his second wife and A-6 the brother of A-5, and there was some amount of friction between them on account of these conflicting claims. At about 1:30 a.m., on the 6th January, 2002, PW-1 and the deceased were sleeping in their house when A-3, A-5 and A-6 armed with bamboo sticks, A-4 armed with a reaper and A-1 with a stone reached that place and on the exhortation of A-1 that the deceased should be finished off, he was attacked by all the accused. The deceased

also attempted to

escape but in that effort he fell down whereupon A-4 hit him on the skull, A-2 attacked him with a knife and A-1 with a stone on his head. PW-1, who had seen the incident, went close to her husband and found that he was dead. She immediately went to the Panchayat President who directed her to approach the police. She accordingly reached police station, Namakkal at about 6:30 a.m. and lodged a report and a case under Sections 147, 148 and 302 of the Indian Penal Code was registered. The Inspector of police, PW-16, thereafter took up the investigation, visited the site, made the necessary enquiries and sent the dead body for its post mortem examination. The post-mortem, performed by PW-9, revealed 24 injuries on the dead body. The accused were also arrested and pursuant to the disclosure statements made by A-1 and A-2, the weapons used by them were recovered.

On the completion of the investigation, the accused were charged for offences punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code. They pleaded not guilty and were brought to trial.

2. The Trial Court, relying on the evidence of PW-1, the only eye-witness, held that A-2, A-3, A-4 and A-6 were guilty of the offence under Section 302 read with Section 149 of the Indian Penal Code. The Court, however, acquitted A-1 and A-5 of the charge of murder but found them guilty under Sections 147 and 148 of the Indian Penal Code and awarded them a sentence under those provisions. The Trial Court accordingly

sentenced A-2, A-3,

A-4 and A-6 to life imprisonment under Section 302/149 of the Code.

3. An appeal was thereafter filed in the High Court by the accused.

This appeal was partly allowed and the conclusions drawn were:

“ For the foregoing reasons, the conviction and sentence imposed upon A-2 to A-6 under Section 147 of I.P.C. are set aside, and they are acquitted of the said charge. The conviction and sentence imposed upon A-2 to A-6 under Section 148 of I.P.C. are set aside, and they are acquitted of the said charge. So far as the conviction and sentence imposed upon A-3 and A-6 under Section 302 read with 149 of I.P.C. are concerned, the same are set aside, and they are acquitted of the said charge. The conviction of A-2 under Section 302 read with 149 of I.P.C. is set aside, and instead he is convicted under Section 302 of I.P.C. The life sentence imposed on A-2 is confirmed. So far as A-4 is concerned, the conviction and sentence imposed upon him under Section 302 read with 149 of I.P.C. are set aside, and instead, he is convicted under Section 324 of I.P.C. and directed to suffer one year’s Rigorous Imprisonment”

A-2 and A-4 are before us by way of special leave.

4. In the course of the hearing, Mr. Vijay Francis, the learned counsel for the appellants, has raised pleas similar to those raised in the Courts below. He has first submitted that there was no independent witness to the incident and in the light of the fact that there was no light in the house where the murder had happened and more particularly as there was admittedly grave animosity between the parties, it appeared that the PW-1 had not been able to identify the accused and that they had been involved on mere suspicion or on account of strained relations. It has also been submitted that these possibilities had been facilitated by the

fact that though the

incident is alleged to have happened at about 1:30 a.m. and the police station was only 5 km. away, the FIR had been lodged after a long delay.

It has also been pleaded that in the facts of the case, it appeared that the intention of A-2 was not to cause death but he had the knowledge that death could be caused and as such, he was liable for an offence punishable under Section 304 (II) of the Indian Penal.

5. The learned counsel for the respondent has, however, supported the judgment of the High Court.

6. We see that PW-1 is the wife of the deceased whereas the accused are his close relatives. The facts show the deep set rancour between PW-1 and the deceased on the one side and the accused on the other. Viewed in the light of this family dispute, there is no reason whatsoever for PW-1 to have excluded the true assailants. PW-1 clearly stated as to the manner in which the incident had happened and that she had been a witness from a very short distance. Even assuming, therefore, that there was some uncertainty as to the presence of a light, that would not in any manner detract from the value of PW-1's evidence, as the parties were very well-known to each other and the weapons used were those which would bring the victim PW-1 and the assailants in very close proximity to each other. The spontaneity of the recording of the First information Report supports the prosecution story. PW-1 was the widow of the deceased and his third wife. She would be the only person at home with the deceased at 1.30 a.m. and no other witness could be expected at that

hour. It is obvious

that she was also friendless in the village as the rest of the family had, in a manner, ganged up against her and her deceased husband and even the Panchayat President had made no attempt to help her and had advised her to approach the police. It is natural therefore, that she would have taken a couple of hours to gather her wits and then to leave for the police station 5 km away. The special report was delivered to the Magistrate within a few minutes of 6:30 a.m. We, therefore, find that there was absolutely no delay in the recording of the FIR and that in a manner corroborates the prosecution story. In any case, the courts below have given the benefit of doubt to most of the accused and, we must say, that the High Court has, perhaps, erred in acquitting some of them. In the light of the fact, however, that there is no State appeal against acquittal, we are unable to interfere in this matter.

We also find that medical evidence clearly supports a case of murder against A-2 who was armed with a knife. The doctor, PW-9, who had conducted the post-mortem examination found the following injuries on the person of the deceased :

1. Cut injury of 8 x 2 cm x bone deep present over the center of the skull.
2. A punctured wound 2 cm x 1 cm x bone deep present center of the skull cm behind the first wound.
3. Cut injury of 3 cm x 2 x 1 cm present behind the right ear.
4. A lacerate wound of 3 cm x 2 x bone deep present below the first wound.

5. A lacerated wound of 4 cm x 2 cm x bone deep present 6 cm behind the right ear.
6. A cut injury of 3 x 1 cm x bone deep present over the right temporal region.
7. A lacerated wound of 4 cm x 2 x 2 cm over the left side of the nose.
8. An abrasion of 4 cm present over the right frontal palm of right thumb.
9. Multiple scratch marks present behind the right elbow; right forearm, and back of right hand.
10. A cut injury of 5 x 2 cm x 2 cm present over the right palm of right thumb.
11. Abrasion of 6 cm present below the right nipple.
12. Abrasion of 5 cm right lower abdomen.
13. Multiple scratch marks present over the left chest, back of the left elbow, outer aspect of the left wrist, outer aspect of right thigh, front of right knee joint.
14. Contusion outer aspect of right thigh.
15. Abrasion of 5 cm present over the outer aspect of right leg.
16. Punctured wound of 2 cm x 1 cm x bone deep over the lower 1/3 of right leg of outer aspect.
17. Multiple scratch marks present over the outer aspect of right foot.
18. Bone deformity present over the lower 1/3 of right leg.
19. An abrasion of 4 cm present over the outer aspect of middle third of left thigh.
20. Contusion present over the posterior aspect of M/3 of left thigh.

21. Multiple
scratch

marks present over the upper third of posterior aspect of left leg and lateral aspects of left foot.

22. Punctured wound of 3 x 2 x bone deep present below the left knee joint.
23. A lacerated wound 4 X 2 cm x bone deep present over the upper 6/3rd of left leg.
24. A lacerated wound of 3 cm x 2 cm x bone deep present over the lower 3 of the left leg.

Extremities.

- 1.Fracture of right tibia L/3 present
- 2.Fracture of right tibia upper third.

Skull 1.blood clots present over the right temporal region, 2. right temporal bone lacerated.

He also opined that injury Nos. 1 and 2 could have been caused with a knife and that these two injuries had caused the death of the deceased. The Trial Court and High Court have both held that as A-2 had caused these injuries, he alone was liable for the murder, more particularly as they were both on the head. We also see that the High Court was, perhaps, not justified in acquitting A-4 of the charge of murder and finding him guilty under Section 324 only as the facts show that he too had been armed with a lethal weapon and had attacked the deceased while he lay asleep. To say, therefore, that there was no common intention to commit murder appears to be rather farfetched. However, in the light of the fact that the State Government has not chosen to file an appeal, we are constrained to accept the situation as it is. The appeal is therefore dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

**JANUARY 20, 2011,
NEW DELHI.**