

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

CRIMINAL APPEAL NO. 2316 OF 2009

RAMUTHAI

.....

APPELLANT

VERSUS

**STATE REP. BY
INSPECTOR OF POLICE & ANR.**

.....

RESPONDENT

**WITH
CRIMINAL APPEAL NO. 2317 OF 2009**

NALLAN @ SANTHANAM

.....

APPELLANT

VERSUS

**STATE REP. BY
INSPECTOR OF POLICE & ANR.**

.....

RESPONDENT

O R D E R

CRIMINAL APPEAL NO. 2317 OF 2009

The appellant Nallan is stated to have died during the pendency of this appeal in this Court while undergoing his sentence. We, accordingly, dispose of the appeal as having abated.

CRIMINAL APPEAL NO. 2316 OF 2009

1. This appeal arises out of the following facts:

1.1 Malaisamy the deceased, son of P.W. 1, was a silversmith and was working in that capacity in some shop. Palani Kumar, son of A1 and A2 i.e. Nallan and Ramuthai respectively was a friend of the deceased. As Palani Kumar was a person of dubious credentials A1 and A2 were not happy with the association and they would often tell the accused that they would not permit their son to go with them and some incident had taken place a week prior to the present one and there was a great deal of unpleasantness on that account. At about 9:00p.m. on the 21st September, 2002, P.W. 1 Ramanathan went to the nearby shop to purchase a beedi while the deceased followed him for purchasing a mosquito coil. After the deceased had made his purchase and was proceeding towards his house he found A1 to A6 armed with cutting weapons standing and waiting for him. A2, the appellant herein, exhorted her co-accused to kill Malaisamy on which the other accused attacked him with their weapons killing him at the spot. A First Information Report was thereafter lodged by P.W. 1 for offences punishable under Section 302 etc. of the Indian Penal Code. The trial court on a consideration of the evidence acquitted A7 and A8 of all charges. The other accused were however convicted and sentenced under Section 302 etc. of the IPC and awarded suitable terms of

imprisonment. An appeal was thereafter taken to the High Court by the convicted accused and the High Court has, by the impugned judgment, acquitted A5 and A6 as well. It appears that A3 and A4 filed no special leave petitions in this Court whereas A1 and A2 filed Criminal Appeal Nos. 2316 and 2317 of 2009. The appeal filed by A1 Nallan has already been disposed of by us as having abated and we are now left with the appeal of Ramuthai, the appellant before us.

2. It will be seen that the appellant has been convicted under Section 302 read with Section 109 of the IPC. The basis of her conviction lies in the evidence of four eye witnesses Pws. 1 to 4. The High Court has found that P.Ws. 2 and 4 who were close relatives of the complainant party could not be relied upon and the entire case therefore hinged on the evidence of P.Ws. 1 and 3, the father and the uncle of the deceased.

3. Mr. Jayanth Muth Raj, the learned counsel for the appellant has, accordingly, argued that in the light of this uncertain evidence and in the background of the fact that the appellant had been charged for exhorting her co-accused to kill the deceased and no weapon had been recovered from her, it could not be said that she had abetted the murder. He has further pointed out that some emphasis had been laid by the High Court on the statement

of P.W. 3 who could be said to be an independent witness as he had deposed that he and his brother P.W. 1 had not been on speaking terms for 25 years and as such his evidence could be relied upon. Mr. Muth Raj has, however, pointed out that from the statement of P.W. 18, the Investigating Officer, it was not clear as to whether the statement of P.W. 3 had been recorded under Section 161 Cr.P.C. or not and as such his evidence had to be looked upon with suspicion. He has finally submitted that the fact that P.W. 18, the Investigating Officer, bore deep animosity with A1 and A2 was clear from the record inasmuch that Palani Kumar aforesaid had died in police custody and on a complaint made by the appellant, an inquiry had been conducted not only by the National Human Rights Commission but also by senior police officers against him.

4. Mr. Subramonium Prasad, the learned counsel for the respondent-State has however, supported the judgments of the trial court and the High Court.

5. We have considered the arguments advanced by the learned counsel. It is the obligation of the prosecution to prove its case beyond reasonable doubt and if a doubt is cast on the evidence, the benefit thereof must go to the accused. In the case before us the only part attributed to the appellant is that she had exhorted her

co-accused to commit the murder. We find this to be rather far-fetched as it is apparent that a large number of persons had come armed to the place of incident and there was no need for her to exhort them. We also see that the evidence of P.W. 5 on this aspect appears to be somewhat ambivalent. The High Court itself has refused to rely on the evidence of P.W. 2 and P.W. 4 and as submitted by the learned counsel for the appellant, there is some uncertainty with regard to the evidence of P.W.3 as well. In the light of the fact that P.W. 18 admittedly bore grievous enmity against A1 and A2 the possibility that he had roped in A2 to make out a false case to settle personal scores, cannot also be ruled out.

6. For these cumulative reasons, we find that the appellant's conviction is unacceptable. We, accordingly, allow the appeal, set aside the order of the courts below insofar as the appellant Ramuthai is concerned and order her acquittal. She is stated to be in custody. She shall be released forthwith if not wanted in connection with any other case.

.....J
[HARJIT SINGH BEDI]

NEW DELHI
AUGUST 02, 2011.

.....J
[GYAN SUDHA MISRA]



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CRIMINAL APPEAL NO. 2316 OF 2009

RAMUTHAI APPELLANT

VERSUS

**STATE REP. BY
INSPECTOR OF POLICE & ANR. RESPONDENT**

O R D E R

We have heard the learned counsel for the parties.
Vide our separate reasoned order, we have allowed the appeal and ordered the acquittal of the appellant herein.

It is stated that the appellant Ramuthai is in custody. She shall be released forthwith if not wanted in connection with any other case.

The reasoned order shall be separately placed on record.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

**NEW DELHI
AUGUST 02, 2011.**

