

Thiru Sudali @ Madasamy

Vs

State of Tamil Nadu

Criminal Appeal No. 186 of 1986

(G. T. Nanavati, N. Santosh Hegde JJ)

04.02.1999

JUDGMENT

G.T. Nanavati J.

1. The appellant was tried along with Pandey @ Ram Krishnan for committing murder of Kittu @ Muthu Krishnan in Sessions Case No. 95/76. The court of Sessions, Madurai, acquitted both the accused. On appeal by the State, the High Court convicted both of them for the offence punishable under Section 302 read with Section 34 IPC. Against the order of acquittal, a revision application was also filed by the brother of the deceased. Pandey has not challenged his conviction. This appeal is filed by Sudali @ Madasamy only.

2. In order to prove its case, the prosecution had mainly relied upon the evidence of PWs 1 and 2 and the three dying declarations - Exhs. P1, P15 and P18 of Kittu @ Muthu Krishnan.

3. The trial court did not believe the evidence of PWs. 1 and 2 and also the dying declarations. It gave 11 reasons in support of the findings. The High Court considered each one of those reasons and pointed out that none was (sic) enough to sustain the findings. We have considered the reasons given by the trial court and we find that they were rightly held not acceptable. On flimsy grounds, the trial court had rejected the evidence of PWs. 1 and 2 and the dying declarations. The High Court has given good reasons for believing the evidence of PWs. 1 and 2 and the dying declarations. The appellant was none other than the person who was earlier working with the deceased and whose services were terminated by the deceased. There was enough light when the incident had taken place. The FIR was lodged within 45 minutes. At about 4.30 a.m., Inspector Incharge had taken further statement of the deceased and at 6.45 a.m. his dying declarations was recorded by the Judicial Magistrate. Thus, within a short time, the deceased had disclosed the names of his assailants. It is not possible to accept the contention of the appellant that as his relations with the deceased were not good, the deceased had falsely involved him because the deceased would not have liked to do so and allow the real culprits to go set free. The dying declarations also receive corroboration from the evidence of PWs 1 and 2 who have said that when they heard shouts they came out of the nearby garrage where they were working and saw the two accused running away from the place of the incident. They had purchased the accused but when they were shown a knife by one of them, they did not pursue them further, returned to the place of the incident and took the injured to the Police Station. Both the witnesses have stated that they knew the accused and the deceased since before the incident. There was no reason for PWs. 1 and 2 to falsely depose against the accused. The dying declaration - Ex. P8 was recorded by a Judicial Magistrate. The evidence discloses that at that time except the doctor no one else was present.

4. We therefore see no reason to interfere with the findings recorded by the High Court. In our view, the High Court has rightly convicted the appellant under Section 302 read with 34 IPC. This appeal is, therefore, dismissed.

5. The bail of the accused is cancelled and he is directed to surrender to serve out the remaining sentence.