SUPREME COURT OF INDIA

Subramani @ Jeeva @ Kullajeeva

Vs.

S.H.O., Odiyansalai

Crl.A.No.1033 of 2005

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

30.03.2011

ORDER

1. We have heard the learned counsel for the parties at a very great length, more particularly, as the judgment before us is one of reversal; the Trial Court having acquitted all the accused and the High Court reversing the judgment qua the solitary appellant herein. The facts of the case are as under:

2. On the 4th November, 1991 PW.1, along with his brother the deceased-Tamilvendhan, went to a restaurant in Labortene Street, Pondicherry. At the restaurant his friends PWs. 2, 3,4 and another person joined them. They ordered their food and while they were waiting to be served, asked for some drinks. A short while later they heard sounds of breaking of plates inside the restaurant. The seven accused then came out and while they were passing by PW's.1,2,4 and the deceased, appellant-Subramani made an abrasive comment on the complainant party. The deceased however laughed at him on which the appellant called his friends and they surrounded the table of the complainants.

3. The appellant also took up a bottle lying on the table, broke it by hitting it on the table and stabbed Tamilvendhan on his neck. When PW.1 intervened he too was caused injuries in that process. On seeing this PW.2 came out to rescue them and he too was attacked by the appellant. The deceased fell down on the ground whereafter all the accused ran away from the place. The incident happened at about 10.45 p.m. The deceased, accompanied by the injured PWs 1 and 2, was then taken to the Government hospital, Pondicherry, where they were examined by PW.10 at 11.10 p.m. Tamilvendhan was found dead on arrival. Information was also sent to the police at about 11.20 p.m. on which PW.20-the Sub-Inspector, attached to the concerned police station, reached the hospital and recorded the statements of PWs.1 and 2 and on that basis a First Information Report was registered at 1.10 a.m. on the 5th November, 1991. All the accused were arrested on the 26th November, 1991 and were subjected to a test identification parade three days later while in jail. PWs. 1 and 2 identified all the seven accused in the course of the test identification parade. On the completion of the investigation the accused were brought to trial for offences punishable under Sections 148, 302, 324 read with Sec.149 of the IPC. The Trial Court held that the

statement of PW.1 could not be believed more particularly as both PW. 2 and PW.4 had been declared hostile. Doubt was also expressed with regard to the test identification parade by observing that the photographs of the accused had been shown to the prosecution witnesses prior thereto. The Court also held that there was also some doubt as to the place where the incident had happened. An appeal was thereafter filed by the State before the High Court. The High Court has, while confirming the acquittal of six of the accused, set aside the judgment of the Trial Court with respect to the appellant Subramani, by holding that his acquittal was perverse and contrary to the evidence on record. The High Court accordingly relying on the evidence of PW.1, the medical evidence, and the test identification parade held that the appellant was involved in the incident but as the incident was the out come of a sudden quarrel the matter fell within Exception 4, to Section 300 of the IPC and the appellant was liable to be convicted under Section 304 Part-II of the IPC and accordingly keeping in the mind the fact that the case was fifteen years old and the appellant had a mentally challenged brother to look after, the ends of justice would be met if a sentence of three years R.I. was imposed on him. The Court also observed that in the facts of the case the involvement of the other accused i.e. Respondents Nos.2 to 7 before the High Court could not be made out with the aid of Section 149 of the IPC. It is in this situation that present appeal is before us at the instance of the solitary appellant.

4. Mr. Raju Raghupathi, the learned senior counsel for the appellant, has at the very outset argued that as PWs. 2 and 4, two of the eye-witnesses had been declared hostile the High Court's reliance on PW.1 alone was not acceptable more particularly in an appeal against acquittal. He has also pointed out that even assuming for a moment that PW.1 had been present at the place of incident the question of identification of the accused still remained alive as it had come in evidence that the light in the restaurant was very dim and as both parties were in a completely inebriated condition it was impossible for PW.1 to have identified anyone. He has also doubted the very basis of the test identification parade and has urged that as the photographs of the accused had been shown to PW.1 the sanctity of the identification parade was also in doubt He has finally prayed that even assuming that no cause for the setting aside the conviction was made out, the facts of the case required that the sentence of the appellant be reduced as the incident had happened twenty years ago.

5. Mr. V.Kanagaraj, the learned senior counsel for the State, has supported the judgment of the High Court and pointed out that in the light of the fact that the High Court had opined that the judgment of the Trial Court was perverse and based on a complete misreading of the evidence, interference in an acquittal appeal was fully justified. He has also urged that there was no reason whatsoever to disbelieve PW.1 who was an injured witness and that the injured and the deceased had been removed to the hospital within 15-20 minutes and even the FIR had been lodged within an hour or two supported the prosecution story. He has also pointed out that there was absolutely no reason to doubt identification parade more particularly as there was absolutely no evidence to show that PW.1 was completely inebriated so as to be incapable of recognizing any one.

6. We have heard the learned counsel for the parties at a great length. It is true that the High Court dealing with an appeal against acquittal has its options some what circumscribed. It has however been observed by the High Court that the judgment of the Trial Court in so far as the appellant was concerned was completely against the record and perverse. It is the conceded position before us that PW.1 had indeed been present when the incident happened. Even otherwise, the evidence that the incident happened at about 10.30-10.45 p.m. on the 4th November 1991 and the injured had reached the hospital within 20 or 25 minutes and that the doctor had sent intimation to the police on which the ASI had reached the hospital within half an hour and the formal FIR recorded at 1.10 a.m. on the 5th November 1991 are all proved on record. The fact that PW.1 was present is fortified by the injuries found on his person. Mr. Raghupathi has, however, argued that as PW.1 was not in a position to identify any one and to who had caused the specific injuries, no relevance could be placed on his testimony. We find this plea to be unacceptable. The incident took place in a public restaurant and though such a place may have dim lighting but complete darkness would be an impossibility. Even otherwise, Mr. Raghupathi's argument that the dim light precluded the identification of the accused is without substance. Admittedly, the restaurant in question was a very small one having four tables. It has also come in the evidence that there were four tube lights in the restaurant. We must therefore assume that light was not so dim that a person standing a feet or two away would not be identifiable.

7. There is another relevant circumstance. Admittedly the accused were not known to PW.1 before the incident. However the physical description of the appellant was given in the FIR itself. The High Court has opined very adversely on the conduct of the Trial Court in ignoring this substantial and very pertinent evidence given as to identity the appellant.

8. Much time and effort has been expended by Mr. Regupathi on the fact that PW.1 was completely drunk at the time of the incident and therefore not in a position to identify any of the accused. We have gone through the evidence of PW.1 very carefully. There is not even a suggestion put to him that he was completely drunk at the time of the incident. We also find that no question had been put to the investigating officer or to the Doctor as to the condition of PW.1 at the time when he had been brought to the hospital or at the time when his statement had been recorded for the registration of the FIR. In the absence of any evidence the suggestion that PW.1 was drunk, is completely baseless. We must also emphasize the distinction between being drunk or having a drink. PW.1 and his friends and the deceased were having a drink in the restaurant prior to having their dinner but to say that PW.1 was drunk at that time is not forthcoming from the evidence. We therefore find in the facts of the case that the High Court's interference in the appeal in so far as the present appellant was concerned, was fully justified.

9. We have also considered Mr. Raghupathi's argument with regard to the quantum of sentence. The High Court was almost apologetic that a sentence of only three years was being awarded but keeping in view the fact that the incident had happened 15 years earlier and the appellant had a mentally challenged brother, had chosen to keep the sentence at only three years .

10. We think that no cause is made out for interference even on the quantum of sentence.

11. Dismissed.