Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.567 OF 2012

Hakkim ...Appellant

VERSUS

State Represented by
Deputy Superintendent of Police ...Respondent

With

CRIMINAL APPEAL NO.568 OF 2012

Sarfudheen & Anr. ...Appellants

VERSUS

State Represented by
Deputy Superintendent of Police ...Respondent

&

CRIMINAL APPEAL NO.1410 OF 2011

Samsudheen ...Appellant

VERSUS

State Represented by
Deputy Superintendent of Police ...Respondent

J U D G M E N T

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. In these appeals preferred by Accused Nos.1 to 4 (hereinafter referred to as 'A-1, A-2, A-3 and A-4'), the Appellants herein seek to challenge the judgment passed by the Division Bench of the High Court of Judicature at Madras. The Division

Bench by the impugned judgment dated 23.07.2008 in Criminal Appeal No.359 of 2005 confirmed the conviction and sentence imposed by the learned Sessions Judge in the judgment dated 06.04.2005 in SC No.240 of 2003.

2. Shorn of unnecessary details, the case of the prosecution was that PW-1 by name Alim George was a resident of Kaliba Sahib Street in Nagur Town. He was living with his three wives by name Fatima, Sayeeda (deceased) and Sameema and their mothers, his daughter Jeni, his son Jaffer Hussain, Rahana sister of his deceased wife Sayeeda, one of his friends by name Goodnameshah PW-2 and his nephew Niyaz Ahmad PW-3 were also living along with him. PW-1 stated to have worked as Imam in some mosque in Koothanallur before setting up his residence in Nagur. He also stated to have worked as Principal in the Melapalayam Arabic college. He has also worked as Imam in a mosque in Malaysia apart from serving as a teacher in a Madrasa at Udumalaipet. His guru was stated to be one Sayed Ali Sahib in Nagur.

3. There were certain allegations against PW-1 to the effect that he was indulging in certain nefarious activities, namely,

exploiting women folk by drugging them and also thereafter blackmailing them. At the instance of PW-23, a report appeared about the nefarious activities in a magazine called “Yevukanai”. According to the prosecution, the said report provoked the accused along with three others, two of whom were also prosecuted before the trial Court which resulted in their involvement in the present crime alleged against them.

4. It is stated that when PW-1 along with the other residents was in his house on 26.10.1996 at 4.00 p.m., the door of the house was pushed open by the Appellants-accused holding knives in their hands, they entered the house and asked for PW-1 by calling who was ‘George’ and one of the accused placed a knife on the neck of PW-3 while another accused pulled the deceased Sayeeda by her hair and yet another person advanced towards PW-1 while another accused extorted to ‘kill him’. When the accused attempted to inflict injuries on PW-1, he warded off the same which resulted in an injury to his forehand. At that point of time while deceased Sayeeda raised an alarm, the accused persons caught hold of her hands and legs and inflicted multiple injuries on her. When PW-4, the mother of the deceased came for her rescue, she was inflicted with stab injuries in which process

her right hand ring finger got severed. While three of the accused held the deceased Sayeeda, A-1 stated to have cut her throat which resulted in her instantaneous death. When PWs-2 and 3 tried to intervene, they were also inflicted with knife injuries.

5. In view of the milieu created, people living in and around the place of residence of PW-1, gathered around and caught hold of all the four accused-Appellants. The deceased and the injured were shifted to the hospital where PW-1's statement Exhibit P-5 was recorded which was registered as Crime No.464 of 1996 at 6.30 p.m. at Nagur Police Station under Sections 147, 148, 452, 324, 307 and 302, IPC and the express report was forwarded to the Judicial Magistrate at Nagapattinam and was delivered at 00.10 hours.

6. The accused, who were held by the neighbours, were beaten by the public and were shifted to the hospital by the police personnel. It is in the above stated background that the Appellants were arrested along with the other two accused and after recording the statements of witnesses, the charge-sheet came to be filed. Apart from PWs-1 to 4, the injured eye witnesses related to the deceased, an independent witness PW-5

who was employed on that day for changing the tiles of the roof of the house of PW-1 was also examined. PW-10 was the post mortem doctor and Exhibit P-15 is the post mortem certificate. PW-8 was the doctor who examined the injured eye witnesses PWs 1 to 4 and Exhibits P-6, P-7, P-8 and P-9 were the certificates issued by PW-8. M.Os. 2 to 5 were the knives. The accused Appellants were arrested on 26.10.1996 at 7 p.m. i.e. on the date of occurrence.

7. PW-1 suffered one grievous injury which is a cut injury at left forearm. PW-2 suffered one cut injury on the back apart from one abrasion. PW-3 suffered two simple injuries. PW-4 suffered six cut injuries, of which injury Nos.1 to 3 were simple and injury Nos.4 to 6 were grievous. PW-32, the doctor examined the accused on 27.10.1996 at 4.35 p.m. Exhibits P-40, 41, 42 and 39 were the certificates issued by PW-32 relating to injuries sustained by A-1 to A-4, respectively. It was recorded by PW-32 to the effect that the accused Appellants informed PW-32 that they were beaten up by the public. Exhibit P-29 is the FSL report confirming presence of blood in seven items. Exhibit P-30 disclosed the blood group of deceased as 'O' group. It also revealed that the blood found in one of the knives was

disintegrated. PW-10, in her evidence, stated that the four knives marked in the case could have caused the injuries sustained by deceased as well as by other injured persons.

8. In the trial Court, the prosecution examined as many as 34 witnesses apart from marking Exhibits P-1 to P-42. M.Os.1 to 11 the material objects were also placed before the Court. M.Os.2 to 5 were the knives which were used in the crime. M.Os.7 to 11 were the dress worn by the deceased Sayeeda. M.O.6 was the blood stained cement flooring while M.O.7 was the cement flooring without blood stain. The trial Court reached the conclusion that all the charges framed against A-5 and A-6 were not proved beyond all reasonable doubts and, therefore, they were acquitted. It also held that the charges framed under Section 120B IPC against A-1 to A-4, that the charge framed against A-3 under Section 324, IPC (one count) and the charge framed against A-4 under Section 326, IPC were not proved. They were accordingly acquitted of the said charges. It, however, found all the Appellants-accused guilty of the charges under Section 449, IPC and A-1 was found guilty of charges under Section 307, IPC and 302, IPC as well as charge under Section 324, IPC found proved against A-3 and A-4. The Appellants were

sentenced to undergo RI for a period of 5 years for the charge found proved against them under Section 449, IPC. A-1 was sentenced to undergo RI for three years for an offence under Section 307, IPC. A-2 to A-4 were sentenced to undergo three years RI for the offence under Section 307 read with Section 149, IPC. A-1 was sentenced to undergo life imprisonment for the offence under Section 302, IPC and A-2 to A-4 were sentenced to undergo life imprisonment for the offence under Section 302 read with Section 109, IPC. A-3 and A-4 were sentenced to undergo six months RI for the offence under Section 324, IPC.

9. In the light of the long period during which they were in jail in other cases and since it was pleaded that there was none to pay any fine on their behalf, the trial Court refrained from imposing any fine on Appellants-accused. By the impugned judgment the Division Bench of the High Court having confirmed the conviction and sentence imposed by the trial Court the Appellants are before us.

10. We heard Mr. K.T.S. Tulsi and Mr. Ratnakar Dash, learned Senior Counsel for the Appellants and Mr. Subramonium Prasad, learned Additional Advocate General for the State. Mr. Tulsi in his

submissions focused mainly on the sentence aspect apparently finding that the accused Appellants were apprehended at the crime spot and caught red-handed. We also do not find anything wrong in the approach of the learned Senior Counsel in making the submissions as above in the peculiar facts of this case. In support of his submissions, the learned Senior Counsel pointed out that while four knives M.Os. 2 to 5 were marked in the case, only one knife was sent for scientific examination in which though blood was noted as per Exhibit P-30 the blood found was disintegrated. The learned Senior Counsel would, therefore, contend that it will have to be proceeded on the footing that only one knife was used in the crime. By pointing out the said factor, learned Senior Counsel contended that it will have a serious bearing on the charge under Section 109, IPC as well as invocation of Section 149, IPC could not have been made.

11. The learned Senior Counsel, therefore, contended that the intention of A-1 who was armed with a knife and the others can only be attributed with knowledge, in which event, at best the conviction can be only under Section 304 Part II, IPC and not for the offences for which they were convicted. To strengthen the above submission, learned Senior Counsel pointed out that the

injuries found on the body of the deceased under Exhibit P-15 also disclosed that other than the injury on the neck which was attributed to A-1, there was no other injury on any other vital part of the body of the deceased. The learned Senior Counsel in his submissions, therefore, contended that at best the other accused can only be attributed with the possibility of over enthusiasm and exaggeration and, therefore, taking the above factors into account, it should be held that the sentence already suffered should be held to be sufficient.

12. The learned Senior Counsel contended that the accused were arrested on 26.10.1996 i.e. on the date of occurrence, that while A-1 and A-2 were granted bail on 05.06.1997, A-3 and A-4 were granted bail on 26.05.1997. The learned Senior Counsel also submitted that A-1 and A-2 were subsequently arrested in connection with the Coimbatore bomb blast case on 28.03.1998 while A-3 and A-4 were arrested on 24.10.1998 and 16.11.1998, respectively. The learned Senior Counsel contended that while A-1 was convicted in the Coimbatore bomb blast case for seven years and he has already suffered the sentence, A-2 was sentenced to life imprisonment. As far as A-3 is concerned, it was submitted that he was acquitted in the bomb blast case and no

further appeal was filed against the said acquittal. A-4 was stated to have been imposed the sentence of 10 years and he is undergoing the sentence. The learned Senior Counsel, therefore, reiterated his submission that if the Appellants' intention to kill was not there and in the absence of Sections 109 and 149, IPC being applied, at best, it can only be said that the knowledge of the Appellants could have been only to the extent of likelihood of death of the deceased and, therefore, 304 Part II, IPC can only be applied.

13. Mr. Ratnakar Dash, learned Senior Counsel who appeared for some of the Appellants submitted that while according to the case of the prosecution, seven persons were involved in the crime, only four were caught red handed, that the clothes worn by the accused were not recovered and sent for serological test and in the circumstances when PW-1 was not done to death and the deceased came to be killed, no intention can be attributed to the killing of the deceased as against the accused. The learned Senior Counsel, therefore, contended that the offence of murder cannot be affirmed as confirmed by the learned Sessions Judge as well as the High Court. Learned Senior Counsel relied upon the decisions reported in ***Ankush Shivaji Gaikwad v. State of***

Maharashtra - 2013 (6) SCC 770 and ***Roy Fernandes v. State of Goa and others -*** 2012 (3) SCC 221 in support of his submissions.

14. Mr. Tulsi, learned Senior Counsel appearing for Appellant in Criminal Appeal No.1410 of 2011 submitted that indisputably he was a juvenile on the date of occurrence and when the said plea was raised before the High Court, the High Court declined to grant the relief even though as a matter of fact it was recorded that the age of the Appellant on the date of the occurrence was 17 years and 9 months holding that he was not a juvenile under the provisions of the Juvenile Justice Act of 1986 as per the law that was prevailing on that date. The learned Senior Counsel pointed out that having regard to the development of law as held in the subsequent decisions in ***Hari Ram v. State of Rajasthan and another -*** 2009 (13) SCC 211, ***Ajay Kumar v. State of Madhya Pradesh -*** 2010 (15) SCC 83 and ***Jitendra Singh alias Babboo Singh and another v. State of Uttar Pradesh -*** 2013 (11) SCC 193 even if the conviction of the said Appellant is to be confirmed, he is entitled to the benefit in the matter of sentence as provided under the provisions of the Juvenile Justice Act.

15. Mr. Subramonium Prasad, learned Additional Advocate General for the State in his submissions pointed out that the contention based on the FSL report on the use of one knife alone cannot be accepted, inasmuch as, at the time when the accused were apprehended on the spot all the four knives were recovered with the aid of mahazar witnesses which were duly placed before the Court. Learned Additional Advocate General also relied upon the eye witness account of PWs 1 to 4 who referred to the use of all the four knives indiscriminately on the spot by the four accused which evidence was further supported by the various injuries sustained by those witnesses some of which were grievous in nature apart from the evidence of the independent witness PW-5. Learned Additional Advocate General also pointed out that the deceased having suffered as many as 14 injuries all over her body, it is futile on the part of the Appellant to contend that only one knife could have been used which was attributed to A-1. Learned Additional Advocate General, therefore, submitted that invoking Section 302 read along with Sections 109 and 149 was rightly and correctly applied for which they were ultimately convicted. Learned Additional Advocate General contended that all the accused entered the house of PW-1 fully planned with an

intention to kill, armed with weapons individually and, therefore, having regard to their involvement in the occurrence in which one died while two others were seriously injured apart from two others who suffered minor injuries and, therefore, there is no scope for any leniency in the matter of sentence.

16. Having heard the respective submissions of the learned counsel, we are also convinced that there is no scope for reducing the sentence as was submitted by the learned Additional Advocate General. As far as the submission made based on single knife is concerned, as rightly pointed out by learned Additional Advocate General, it is a case where the accused were apprehended on the spot and the recovery of the weapons was also carried out at the time when they were apprehended. The said factor cannot be disputed in as much as apart from the eye witness account of injured witnesses PWs-1 to 4, the accused themselves were examined by the doctor PW-32 on 27.10.1996 at 4.35 p.m. The injuries on their bodies were noted under Exhibits P-39 to 42 and according to PW-32, at that point of time the accused themselves stated that they were thrashed by the public which is in tune with the case of the prosecution.

17. It is also not in dispute that recovered knives were placed before the trial Court and marked as M.Os.2 to 5. That apart, PW-10, the post mortem doctor in her certificate Exhibit P-15 confirmed the multiple knife injuries found on the body of the deceased. While one of the injuries was on the neck which was attributed to A-1, there were other injuries on the vital parts of the body as well as other parts numbering 13 and all of them were incised wounds ranging from 2cm x 1cm to 15cm x 7cm. Therefore, it is futile on the part of the Appellant to contend that only one knife was used to cause so many injuries on the body of the deceased.

18. That apart, according to PW-8, the doctor who examined PWs-1 to 4 and issued Exhibits P-6 to P-9 certifying the injuries. Exhibits P-6 to P-9 revealed that PW-1 suffered one grievous injury, PW-2 suffered one cut injury on the back apart from one abrasion, PW-3 suffered two simple injuries and PW-4 suffered six cut injuries of which 1 to 3 were simple and 4 to 6 were grievous. One of the injuries suffered by PW-4 resulted in severance of her right hand ring finger. When such extensive injuries were sustained by the injured eye witnesses, it is too late in the day for the Appellant to contend and for the Court to accept that only

one knife was used and the placement of the other three knives could not have been relied upon. The trial Court as well as the High Court rightly rejected the above submissions as such overwhelming evidence was available on record to support the case of the prosecution as regards the use of multiple weapons in the crime committed by the Appellants.

19. Once the said contention of the Appellants is rejected, the other co1ntentions, namely, that there was no scope to invoke Sections 109 and 149, IPC would also fall to the ground. If that is the outcome of the above discussion, there is no scope to find fault with the ultimate conclusion of the trial court having convicted the Appellants for the offences found proved against them for which the sentence came to be imposed. We, therefore, do not find any substance in the submission made on behalf of the Appellants to hold that only Section 304 Part II, IPC can be applied and a lesser punishment should be imposed. Having regard to the extensive use of the weapons by the accused in the process of killing of the deceased and the inflicting of the injuries on PWs-1 to 4, we do not find any scope to show any concession in the matter of punishment and consequently the said submission stands rejected. In the light of our above conclusion,

we do not find any scope to refer to any of the decisions relied upon for reduction of sentence.

20. As far as the submission made by Mr. K.T.S. Tulsi, learned Senior Counsel on behalf of the Appellant in Criminal Appeal No.1410 of 2011 who was A-1 before the trial Court and as rightly contended by learned Senior Counsel, we do find support in the records placed before us wherein in the reply filed on behalf of the State to the application filed for filing additional documents, it is stated as under in paragraph (vi):

> "The High Court observed that as per the contentions of the petitioner, he was aged 17 years and 9 months at the time of commission of the offence. It is pertinent to mention here that the High Court correctly applied the provisions of the 1986 Act in the present case, thereby leading to the finding that since the petitioner has attained the age of 17 years and 9 months on the date of commission of the offence, hence he was not a juvenile as per the provisions of the Act of 1986."

21. Once, therefore, it is shown that the Appellant in Criminal Appeal No.1410 of 2011, who was A-1, was only 17 years and 9 months on the date of the occurrence, the decision reported in **Ajay Kumar v. State of Madhya Pradesh** (supra) applies wherein in the similar circumstances it was held as under:

"6. Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the Juvenile Justice Rules, 2007") provides the procedure as to how a case of a juvenile who is in conflict with law should be disposed of. The same reads as follows:

> "***98. Disposed off cases of juveniles in conflict with law-*** The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 of these Rules and pass an appropriate order in the interest of the juvenile in conflict with law under Section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the said Act.

7. In the light of the aforesaid provisions, the maximum period for which a juvenile could be kept in a special home is for three years. In the instant case, we are informed that the appellant who is proved to be a juvenile has undergone detention for a period of about approximately 14 years. In that view of the matter, since the appellant herein was a minor on the date of commission of the offence and has already undergone more than the maximum period of detention as provided for under Section 15 of the Juvenile Justice Act, by following the provisions of Rule 98 of the Juvenile Justice Rules, 2007 read Section 15 of the Juvenile Justice Act, we allow the appeal with a direction that the appellant be released forthwith."

22. Having regard to the said legal position, the very same consequences set out in the said decision should apply to the case of the Appellant in Criminal Appeal No.1410 of 2011 who

has already suffered more than the maximum period of detention as provided under the Juvenile Justice Act. The said appellant was enlarged on bail by this Court's order dated 18.07.2011. Therefore, while confirming his conviction as per the judgment impugned in this appeal, we hold that he is entitled for the benefit of the provisions of the Juvenile Justice Act and the sentence already undergone by him shall be sufficient for the above conviction. Therefore, he shall not be detained any more in this case unless his detention is warranted in any other case. Criminal appeal No. 1410 stand disposed of on the above terms.

23. The appeals filed by the other Appellants in Criminal Appeal No.567 of 2012 by A-4 and Criminal Appeal No.568 of 2012 by A-2 and A-3 stand dismissed.

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

.....J.
[Shiva Kirti Singh]

August 06, 2014
New Delhi.