

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 707 OF 2007

Edward ...Appellant
:Versus:

Inspector of Police, Aandimadam Police Station
...Respondent

WITH

CRIMINAL APPEAL NO. 774 OF 2007

Periyanaayasamy and Ors.Appellants
:Versus:

Inspector of Police, Aandimadam Police StationRespondent

JUDGMENT**Pinaki Chandra Ghose, J.**

1. These appeals have been filed by accused persons against the judgment and order dated 16.3.2006 passed by the Madras High Court in Criminal Appeal No.1540 of 2002 by which the High Court has dismissed the appeal filed by the appellants. The facts of the case as narrated by the prosecution are briefly stated as under:

2. The deceased Michaelraj and the accused persons were residents of the same Village in Taluk Udayarapalayam in District Perambalur. There was a land dispute between Michaelraj and the accused persons on account of which there was enmity between them. Originally, the grandmother of the deceased Michaelraj executed a settlement deed in favor of Michaelraj which was subsequently cancelled. Thereafter, a portion of the property was executed in favor of the appellant. Despite the settlement deed, the appellant claimed that his possession of property was disturbed by the deceased and his relatives. Therefore, the appellant filed a suit against the deceased and his relatives. The appellant further claimed that even though interim orders were passed in the suit, Michaelraj and his relatives did not allow the appellant to enjoy his possession of the property.

3. On 10.12.1997 at around 7:30 p.m., when Michaelraj along with his friend John Paul was returning from the house of his father-in-law, the appellant and other accused persons attacked him with deadly weapons. This occurrence was witnessed by John Paul (PW-1) and Anthoni Raj (PW-3). The

deceased sustained injuries and was taken to the hospital in a serious condition. In the meantime, PW-1 went to the Police Station and filed an FIR to PW-11. Subsequently, a case was registered under Sections 147, 148, 341, 324 and 307 of the Indian Penal Code ("IPC"). On 14.12.1997, Michaelraj died at the hospital and thereafter the inspector of police (PW-12) altered the case into one under Section 302 of the IPC. PW-12 filed an application seeking police custody from the Court. On police custody, he obtained confession from the appellant, which led to the recovery of weapons, which were sent for chemical examination. Thereafter, PW-14 took up the matter from PW-12 and investigated the case further and filed a charge-sheet for offence under Section 302 of the IPC.

4. The matter came up before the Trial Court, which after going through the evidence provided by the sole-eyewitness PW-3, concluded that the case of prosecution is proved beyond doubt and thereby convicted the accused under Sections 148, 149, 302 & 341 of IPC. Aggrieved by the judgment of the Trial Court, the accused preferred an appeal before the Madras High Court. The High Court vide its judgment and order dated

16.3.2006, partly allowed the appeal filed by the accused persons, convicted them under Section 304 Part II of IPC and sentenced them to rigorous imprisonment for five years, stating that the doctor who treated the deceased was not examined and the documents regarding the nature of treatment were not produced. Aggrieved by the said judgment and order passed by the High Court, the sole appellant is before us.

5. We have heard the learned counsel appearing on behalf of the parties. Learned counsel appearing for the appellant has relied on the case of *State of Orissa v. Brahamananda Nanda*, (1976) 4 SCC 288, in which the entire case of the prosecution rested on the oral evidence provided by an eye-witness, which was rejected by the High Court and simultaneously dismissed by this Court. The counsel for the appellant also relied on the case of *State of Karnataka v. Venkatesh and others*, (1992) Suppl.1 SCC 539, in which it has been held by this Court that in absence of reliable testimony and evidence, guilt of the accused cannot be proved. The learned counsel contended that in the present case, there was no reliable evidence adduced by PW-3 as he was the only witness providing

evidence against the accused and it can be further seen that PW-1 had turned hostile.

6. Learned counsel for the appellant further relied on the case of *Harish Kumar v. State Delhi Administration*, (1994) Suppl. 1 SCC 462, in which it has been held by this Court that it was not given proper materials to examine the nature of the treatment given to the deceased. The counsel stated that in the present case, the nature of treatment given to the deceased by the doctors had not been recorded and the deceased died four days after the occurrence of the incident. So it cannot be concluded that the deceased died exclusively due to the injuries.

7. Learned counsel for the Respondent on the other hand, supported the impugned judgment passed by the High Court.

8. With regard to the contention of the counsel for appellant where he has stated that the single eye-witness is inimical towards the accused, in the case of *Dalip Singh and Ors. v. State of Punjab*, (1954) 1 SCR 145, it has been held by this Court that, it is true when feelings run high and there is a

personal cause for enmity, there is a tendency to drag in an innocent person against whom the witness has a grudge but foundation must be laid for such a criticism and each case must be judged and governed on its own facts. In this case we do not see any evidence for the eye-witness to be inimical towards the accused.

9. In the case of *Bipin Kumar Mondal v. State of West Bengal*, (2011) 2 SCC (Cri) 150 = (2010) 12 SCC 91, it has been held by this Court that there is no legal impediment in convicting a person on the sole testimony of a single witness provided he is wholly reliable. In the present case there is no ground to doubt the reliability of the evidence provided by PW-3.

JUDGMENT

10. Even if there is a difference between ocular and medical evidence, it is clear from the facts that the accused were present there with the common intention to attack the deceased. Thus, a difference between ocular and medical evidence will not stand any ground in acquitting the accused in the present case.

11. In view of the above discussion, we are of the considered opinion that the facts and circumstances of the case do not warrant any interference by us in the matter. The appeals lack merit and are accordingly dismissed.

.....J
(Pinaki Chandra Ghose)

.....J
(R.K. Agrawal)

**New Delhi;
March 11, 2015.**



JUDGMENT

ITEM NO.1A
(For judgment)

COURT NO.12

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 707/2007

EDWARD

Appellant(s)

VERSUS

INSPECTOR OF POLICE, AANDIMADAM P.S.

Respondent(s)

WITH

Cr1.A. No. 774/2007

Date : 11/03/2015 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Mr. M.N. Rao, Sr. Adv.
Mr. S. Thananjayan, Adv.

Mr. Basant R., Sr. Adv.
Ms. Promila, Adv.
Mr. Karthik Ashok, Adv.

For Respondent(s) Mr. M. Yogesh Kanna, Adv.
Ms. J. Janani, Adv.
Mr. A. Santha Kumaran, Adv.

Hon'ble Mr. Justice Pinaki Chandra Ghose pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice R.K. Agrawal.

The appeals are dismissed in terms of the signed reportable judgment.

(R.NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed reportable judgment is placed on the file)