NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 341 OF 2012

D. THAMODARAN APPELLANT

VERSUS

KANDASAMY & ANR. RESPONDENTS

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal, by special leave, has been directed against the judgment and order dated 30.07.2010 passed by the High Court of Judicature at Madras in Criminal Appeal No.1030 of 2003, whereby the High Court allowed the criminal appeal filed by respondent No.1 herein and acquitted him.

2. The facts of this case, as unfolded by the prosecution, are that the appellant (PW1) was running a Soda Factory under the

name and style of "Suvai" and the 1st respondent herein was also running a Soda Factory under the name and style of "Rusi". As the soda bottles of the 1st respondent were said to have been used by the appellant, their relations were strained and consequently there was enmity between them.

3. On 13.04.2002 at about 9.00 pm, when the appellant (PW1) was talking with Nedunchezhian (PW2), Iyengar (PW4) and Ramesh (PW5) at the Bus Stand near the Ladapuram Mariamman Temple, accused Nos.1 to 6 came there and accused No.1 (1st respondent herein) questioned the appellant as to how the soda bottles from his factory had come to the appellant's factory. Soon the argument between them grew hot and the appellant was surrounded by accused Nos.2 to 6. Accused No.1 abused the appellant and started beating him. Then the father of the appellant – Durairaj (deceased) came there and tried to dispel the quarrel and pacify them. At that point of time, it is alleged that respondent No.1 ran to the mini lorry parked nearby and took out an iron rod (used for removing tyres) and gave a blow on the head of Durairaj. Durairaj fell down, bleeding with injuries, and was taken to the hospital but he was declared dead. There were other allegations of

beating, stone pelting, beatings by glass tumbler, wooden canes given by the other accused persons and PW1 and PW2 also suffered injuries. On hearing the hue and cry, the village people gathered at the place of occurrence. The appellant lodged the report same day at 11.30 p.m. at the Perambalur Police Station and the case was registered as Crime No.174 of 2002 for offences under Sections 147, 148, 323, 302 and 341 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The accused persons were arrested on 18.04.2002, and the alleged recovery of the weapon was made at the instance of Respondent No.1.

4. The post-mortem on the dead body was conducted on 14.04.2002 and it was opined that the deceased could have died due to shock and hemorrhage due to injuries sustained in vital parts, like brain and head and bone fracture.

5. Police filed challan against six accused and thereafter charges were framed against them under section 147, 148, 341, 323 and 302 of IPC. The charges were read over and explained to them. All the accused persons pleaded not guilty and claimed trial.

6. The Trial Court by its judgment and order dated 27.06.2003, convicted Accused No.1 (respondent No.1 herein) for the offence punishable under Section 304 part II IPC, and acquitted Accused Nos.2 to 6, disbelieving the prosecution case. Aggrieved by the judgment and order passed by the Trial Court, respondent No.1 filed an appeal before the High Court. The High Court by the impugned judgment and order allowed the appeal and acquitted respondent No.1 on the ground that the prosecution case suffered from various infirmities, inconsistencies and inherent improbabilities and hence the conviction was unsustainable in law.

7. The appellant (son of the deceased) has challenged before us the judgment of acquittal passed by the High Court. Mr. Basant R., learned senior counsel appearing for the appellant vehemently argued that the prosecution has established a clear and cogent story which is consistent with the evidence of PWs. 2, 4 and 5 and which is further corroborated by the medical evidence of PW3 (Doctor). The said eyewitnesses have clearly established the role of respondent No.1 in the occurrence and there is no material

contradiction in respect of the place of occurrence, the weapon used and the single blow given on the deceased. To strengthen its case, the recovery of the weapon used was made at the instance of respondent No.1. Learned senior counsel for the appellant further argued that there was no undue delay in lodging the FIR (Ex.P-1) and in sending the FIR to the area Magistrate.

8. Mr. Karpagavinayagam, learned senior counsel appearing on behalf of respondent No.1 argued that the High Court has categorically dealt with each of the argument and passed a detailed judgment pointing out serious lacunae. Further, it was argued that the recovery of the weapon was not proved as both the attesting witnesses turned hostile. The iron rod recovered was not found to have any contamination of blood. The defence witness (DW1) successfully proved that weapon was in the hands of PW2 which accidentally hit the deceased when it was aimed at respondent No.1. The other articles used in the attack i.e. glass tumbler, bottles, stones and wooden canes were not recovered. Also blood stained clothes of the witnesses were not taken into custody and there exist serious contradictions in the depositions of the

witnesses. This is in addition to the fact that all the witnesses are interested witnesses and despite the occurrence alleged to have taken place near a bus stand, no independent witness was called. Finally, the learned senior counsel for the respondent argued that there was inordinate delay in lodging the FIR and its genuineness itself was doubtful on the ground that though PW1 had deposed that he had given a written report by himself, but there was a difference in handwriting between the contents of the report and the signatures.

9. We have heard the learned senior counsel for the parties and perused all the evidences and records of the case. At the foremost, the infirmities in the depositions of the witnesses are argued. The four witnesses produced are interested witnesses; three being in blood relation to the deceased and the fourth is a business partner of PW1. From the depositions of the witnesses it is clear that all the witnesses lived within close proximity to the place of incident and the said place is close to a temple, bus stand and tea stall. PW1 has specifically deposed that around 20 people were present at the time of incident and more people came there when the scuffle grew.

The High Court rightly pointed out the lacunae in the investigation that despite the place of occurrence being a busy place, no independent eye witness was examined by the prosecution. The depositions made by the four witnesses also could not firmly established a unified story as their versions differed on the point of the exact place of incident and the sequence of events.

10. The High Court rightly held that the delay in lodging the FIR has not been explained by the prosecution. The incident is alleged to have occurred at around 9:30pm; thereafter the deceased was lying at the spot for about 20 minutes; the deceased was taken to the hospital at about 10:00-10:15pm; and the FIR was lodged by PW1 by giving a report in his own handwriting at 11:30pm. The distance between the place of occurrence and the Perambalur Government Hospital is about 15km, and further 200 meters away is the Police Station. According to PW1, he brought the deceased to the Perambalur Government Hospital at 10pm. However, it is improbable that he covered a distance of 15 km in very short time but took more than an hour to reach the Police Station which was just 200 meters away. Thus, there occurred an undue delay in

lodging the FIR. Another infirmity in the genuineness of the FIR was pointed out by the defence as PW1 stated that he made the FIR in his own handwriting. However, upon examination the handwriting and the signature on the FIR were proved to be not matching with those of PW1.

11. The prosecution based on the medical opinion argued that there was only one blow which resulted into three injuries. The doctor without seeing the weapon opined that the three injuries could have been possible with a single blow by iron rod and even after seeing the weapon held on to his opinion. Even though the above is proved, the prosecution has failed to prove the recovery of M.O.1 i.e. the iron rod. The prosecution witnesses specifically stated that the weapon used was an iron pipe, however, alleged recovery was made of one iron rod. There is difference between an iron pipe and an iron rod. The alleged recovery was not proved by the witnesses, as PW7 and PW11 turned hostile. Upon examination there was no blood stain found on the weapon. Therefore, the prosecution failed to connect the alleged recovered weapon with the weapon used in the incident.

12. The prosecution also failed to explain as to why the blood-stained clothes of PWs were not seized. The said fact would have testified the presence of witnesses at the place of occurrence. Also, the witnesses, at any time, did not depose or produce before the Court their blood-stained clothes. In light of the above, an adverse inference is drawn against the role of the prosecution which already made a material flaw by not examining any independent witness.

13. Another view which disproves the prosecution story is that the witnesses deposed that they were attacked by glass tumblers, bottles, stones and wooden canes. However, none of these articles were recovered or seized by the prosecution from the place of incident. PW1 and PW2 though suffered simple injuries, the doctor (PW3) opined that the injuries could be sustained when entangled in a rough surface, if fallen on a rough surface, bruises could be sustained. There exists a possibility of minor scuffle at the place of incident. PW4 also deposed that there was a scuffle between respondent No.1 and the appellant (PW1).

14. The prosecution has been able to prove the injuries sustained by the deceased. However, serious discrepancies arise from the depositions of the prosecution witnesses. The place of incident and the sequence of events are not proved. The weapon recovered could not be linked to the incident. The recovery itself is not proved. There is inordinate delay in lodging the FIR, which is in addition to the lack of genuineness of the FIR document itself. The possibility of subsequent material alterations cannot be ruled out. The defence examined one independent witness who deposed that the rod was in the hands of PW2 who accidentally struck the deceased while he intended the same on respondent No.1. It appears from the chain of events and previous enmity between the parties that there occurred a scuffle which grew hot and led to an injury which resulted into the death. However, it is not correct to impute the culpability on the accused when various inconsistencies occur in the evidences which are fatal to the case of the prosecution.

15. Thus, in the light of the above discussion, we are of the opinion that the present appeal is devoid of merits, and we find no ground to interfere with the judgment passed by the High Court. The appeal is, accordingly, dismissed.

.....J
(Pinaki Chandra Ghose)

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

New Delhi;

October 07, 2015.