REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1285 OF 2010

ILANGOVAN **... APPELLANT**

VERSUS

STATE OF TAMIL NADU **... RESPONDENT**
REP. BY INSPECTOR OF POLICE

J U D G M E N T

N.V. RAMANA, J.

1. The present appeal is directed against the Judgment dated 06.01.2010 passed by the Madurai Bench of the Madras High Court whereby the appellant-accused's appeal was partly allowed and his conviction under Section 302, IPC was modified into one under Section 304 Part II, IPC and sentence was reduced to 5 years' rigorous imprisonment along with fine. The conviction and sentence imposed upon the appellant under Section 324, IPC was confirmed by the High Court and both the sentences were ordered to run concurrently.

2. The facts necessary for the disposal of the appeal are as follows: the brother of the complainant allegedly had an illicit relationship with the daughter of accused no. 4, which resulted in enmity between the

two families. On 26.01.2002, the accused persons allegedly came in front of the house of the complainant and a fight took place between the two groups. The present appellant attacked the complainant with an iron rod, while the other 3 accused allegedly attacked other members of the family with sticks. The deceased, on hearing the noise, attempted to intervene, and was attacked by the present appellant on the head with the iron rod, which ultimately resulted in her death.

3. The Trial Court convicted the appellant under Sections 324 and 302, IPC and sentenced him to 2 years rigorous imprisonment and imprisonment for life, respectively. The other accused were acquitted as the charges against them were not proved beyond reasonable doubt. On appeal, as mentioned above, the High Court modified the conviction under Section 302, IPC, and sentence imposed thereunder, to one under Section 304 Part II, IPC, on the ground that the case of the appellant fell under Exception 4 to Section 300, IPC, that is, there was a free fight between the two parties.

4. Heard the learned counsel appearing for the appellant – accused and the learned counsel appearing for the State of Tamil Nadu at length today.

5. The learned counsel appearing for the appellant submitted that the High Court erred in convicting the appellant by solely relying upon

the testimonies of the relatives of the deceased. The learned counsel further submitted that the appellant should have been acquitted by giving him the benefit of doubt, particularly when the Trial Court disbelieved the prosecution's case and acquitted the co-accused.

6. On the other hand, the learned counsel for the State submitted that the High Court has considered all the evidence on record and rendered a well-reasoned judgment which does not merit any interference by this Court.

7. With respect to the first submission of the counsel for the appellant, regarding the testimonies of related witnesses, it is settled law that the testimony of a related or an interested witness can be taken into consideration, with the additional burden on the Court in such cases to carefully scrutinize such evidence [See ***Sudhakar v. State***, **(2018) 5 SCC 435**]. As such, the mere submission of the counsel for the appellant, that the testimonies of the witnesses in the case should be disregarded because they were related, without bringing to the attention of the Court any reason to disbelieve the same, cannot be countenanced.

8. The counsel for the appellant next submitted that the benefit of doubt extended to his co-accused should also have been extended to him. According to him, once the co-accused were acquitted, the

appellant should also have been acquitted. However, there is no such principle of law, that requires automatic acquittal of an accused because of the acquittal of the co-accused. The same is a settled position of law, which has been reiterated by this Court in numerous judgments, including the case of ***Yanob Sheikh v. State of West Bengal*, (2013) 6 SCC 428**, wherein it was held-

> "**24.** … **Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused.** It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other."
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> **(*emphasis supplied*)**

9. The question therefore is what the nature of the evidence against the co-accused that were acquitted was, in comparison with the evidence against the present appellant. A bare perusal of the judgment of the Trial Court indicates that the nature and quality of evidence against the appellant-accused was distinct from that which was adduced against his co-accused. The Trial Court noted that the other co-accused were the aunt (accused no. 2), mother (accused no. 3) and grandfather (accused no. 4) of the present appellant. The Court noted that accused no. 4 was 70 years old, and could not even stand

straight, let alone presumed to have caused any injury to one of the witnesses. Further, with respect to the actions attributed to the accused no. 2 and 3, the Trial Court held that they appear to be exaggerations and an afterthought, as they were not even included in the complaint. The Court ultimately held that apart from the fact that the accused no. 2 to 4 were present at the scene of the occurrence, there was no concrete evidence in the depositions of the eyewitnesses to indicate that they caused injuries to the witnesses.

10. On the other hand, when it comes to the appellant, the evidence against him is consistent, with the depositions in Court being in line with the complaint and statements made before the police. The appellant is the main accused, who is stated to have attacked the complainant and caused him injuries as well as hit the deceased on her head with an iron rod, resulting in her death. The allegations against the appellant are in line with the chargesheet, the wound certificate regarding the complainant and the post mortem report of the deceased. It is for the above reasons that the Trial Court distinguished between the prosecution's case against the appellant and the co-accused and we see no reason to interfere with the same.

11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be

discarded. The counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three Judge Bench of this Court, as far back as in 1957, in ***Nisar Ali v. The State of Uttar Pradesh*, AIR 1957 SC 366** held on this point as follows:

> "**9.** It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim *falsus in une falsus in omnibus* was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. **This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded**. One American author has stated:
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> > *"...the maxim is in itself worthless; first in point of validity ... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious...." [Wigmore on Evidence, Vol. III, para 1008]*

> **10.** The **doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what may be called "a mandatory rule of evidence**"."
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> **(*emphasis supplied*)**

This principle has been consistently followed by this Court, most recently in ***Rohtas v. State of Haryana*, (2019) 10 SCC 554** and needs no reiteration.

12. The Trial Court, as mentioned above, has given specific reasons for disbelieving the testimony of the witnesses with respect to the co-accused, and extending the benefit of doubt to them, while convicting the appellant on the strength of the evidence against him. We find no infirmity in the approach of the Trial Court.

13. We also find that the High Court, in the impugned judgment, has taken into account the submissions of the counsel for the appellant, and considered the entire evidence, in order to come to the finding that there was a free fight as the appellant also sustained injuries and had even attempted to make a complaint. On the basis of the above, the High Court modified the conviction and sentence imposed on the appellant.

14. The counsel for the appellant has not been able to point out any infirmity in the findings of the High Court. We therefore see no reason to interfere with the impugned Judgment passed by the High Court.

We find no merit in the appeal and the same is, accordingly, dismissed.

15. Consequent upon the dismissal of the appeal, the bail granted to the appellant by this Court on 19-7-2010 stands cancelled and he is directed to surrender before the concerned Trial Court to serve out the remaining period of sentence, failing which the concerned Police Authority shall take him into custody for the purpose.

.....J.
(N.V. RAMANA)

.....J.
(S. ABDUL NAZEER)

.....J.
(SURYA KANT)

NEW DELHI;
02nd SEPTEMBER, 2020.