



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1730 OF 2017

Vinobhai

... Appellant

versus

State of Kerala

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The Trial Court has convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). He was sentenced to undergo life imprisonment and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for six months. The conviction and sentence of the appellant have been confirmed in the appeal by the High Court of Kerala.

2. The allegation against the appellant is that on 31st December 2010, at about 11:45 am, he stabbed Ramakrishnan (deceased) with a knife. Grievous injuries were caused to the deceased as a consequence of which, he died. According to the

case of the prosecution, there was previous enmity between the appellant and the deceased as he was involved in the murder of the appellant's elder brother.

SUBMISSIONS

3. The learned counsel appearing for the appellant has taken us through the evidence of the prosecution witnesses. He submitted that the conviction is based on the testimony of two alleged eyewitnesses namely, Shaju (PW-4) and Suresh (PW-5). He submitted that another witness, Thressiamma (PW-6), did not support the prosecution. He submitted that the evidence of PW-4 does not inspire confidence. His version that the appellant inflicted two to three stabs on the deceased is an omission. He submitted that even his statement that he had seen the incident from a distance of fifteen feet was an omission. Inviting our attention to the evidence of PW-6, he submitted that his allegation against the appellant of having inflicted two to three stab wounds on the deceased is an omission. He submitted that both eyewitnesses appear to be chance witnesses. He also submitted that even according to the version of these two witnesses, there were other eyewitnesses who were not examined by the prosecution. Therefore, an adverse inference deserves to be drawn.

4. The learned counsel appearing for the respondent-State of Kerala, relied on the testimony of PW-4, who stated that after he gave the first blow on the chest, the deceased fell on his chest. Thereafter, two to three blows were given. He submitted that this statement by PW-4 to the effect that the first blow was

given by the appellant on the chest of the deceased was not an omission. The same is the case with the testimony of PW-5. He submitted that even assuming that there are few omissions and contradictions in the testimony of PW-4 and PW-5, the same are not material. Therefore, the entire story of the prosecution cannot be disbelieved. He relied upon the decision of this Court in the case of ***Edakkandi Dineshan alias P. Dineshan & Ors. v. State of Kerala***¹. The learned counsel submitted that the evidence of both the eyewitnesses is believed by both the Courts. He submitted that as both of them supported the prosecution, chargesheet witnesses nos.12 and 14, who were also eyewitnesses according to the version of PW-4 and PW-5, were not examined by the prosecution. The learned counsel appearing for the respondent-State submitted that as the evidence of PW-4 and PW-5 cannot be disbelieved, no interference can be made with the impugned judgments. He also pointed out that the recovery of the weapon of the offence and bloodstained cloths was made at the instance of the appellant.

CONSIDERATION OF SUBMISSIONS

5. We have perused the evidence of the prosecution witnesses. Firstly, we will deal with the evidence of PW-4. His version is that he is in the business of distributing newspapers in the morning, and he uses his motorcycle for that purpose. He stated that he used to collect newspaper bundles at 03:30 am and complete the distribution work by 06:30 am. He

¹ 2025 SCC OnLine SC 28

stated that the incident happened in front of the shop of one Joseph at about 11:45 am. At that time, he was coming by his motorcycle. He saw the appellant putting his hand over the neck of the deceased. The appellant pulled him down and stabbed him in his chest. The deceased fell in a prone position. Thereafter, the appellant inflicted two to three stabs on his back. The appellant came near him and threatened him by showing a knife. The appellant forced the witness to take him near the Maryada Bridge. Accordingly, he dropped the appellant there and went away. He stated that he went in the direction of his house. He deposed that his sister's son, Sumesh, is a Panchayat member. He called the said Sumesh over phone and went back to the scene of the occurrence. He stated that after coming back to the site, he found that there was no sign of movement in the deceased. He stated that the deceased was accused of murdering the appellant's brother. He stated that the deceased was a supporter of the Communist Party of India (Marxist), and the appellant is a worker of the Bhartiya Janata Party. He stated that PW-5 and PW-6 (the wife of Joseph) were present at the time of the incident. He stated that one Sasi of the nearby toddy shop was also present. We may note here that the said Sasi was not examined as a prosecution witness and PW-6 did not support the prosecution.

6. In the cross-examination, PW-4 accepted that he and the deceased were co-accused in the murder case of the appellant's brother. PW-4 admitted in the cross-examination

that though he stated before the Police that two to three stabs were inflicted on the back of the deceased, the same has not been incorporated in the statement recorded by the Police. He also accepted that he does not remember whether he had told the Police that he was standing at a distance of fifteen feet from the scene of occurrence. He stated that though he told the Police that he was afraid, it was not recorded in his statement. He admitted that there were blood stains on his shirt, but he did not submit the same to the Police. He admitted that (a) nobody tried to take the deceased to the hospital, and (b) he did not inform the incident to anybody else on the phone except Sumesh. Apart from the fact that his statements to the effect that he was standing at a distance of fifteen feet from the scene of occurrence and that two to three stabs were given by the appellant on the back of the deceased are omissions, he did not complain to the Police. He informed one Sumesh over the phone, but the said Sumesh has not been examined as a witness. He knew the deceased. He admitted that the Maryada Bridge, where he dropped the appellant, is one and a half kilometres from the scene of the offence. After dropping the appellant, PW-4 went towards his house. The appellant did not immediately come back. He did not make any attempt to take the deceased to the hospital. This conduct of PW-4 is very unnatural. Therefore, his version does not inspire confidence.

7. Now, coming to the evidence of PW-5, his statement that the appellant gave two to three stabs on the back of the

deceased is an omission. He stated that PW-4 was present. PW-6 cried aloud after seeing the incident, and Sasi rushed there. As stated earlier, PW-6 did not support the prosecution, and Sasi was not examined. He stated that by showing a knife to PW-4, the appellant compelled PW-4 to take him on his motorcycle. He stated that there was a case registered against the appellant for stabbing him in 1995. Even his statement that the deceased had fallen on his chest is an omission. His statement that PW-4 was present is also an omission. His statement that two to three blows were given by the appellant by a knife on the back of the deceased is an omission. Even this witness did not go to the Police. He accepted that he did not inform anybody about the incident as he was afraid. The omissions in the testimony of PW-5 are material and relevant and therefore, the same amount to contradiction in view of the explanation to Section 162 of the Code of Criminal Procedure, 1973. Thus, it is very difficult to believe the testimony of PW-4 and PW-5 for the following reasons:

- a.** The statement made by both the eyewitnesses that the appellant inflicted two to three stab wounds on the back of the deceased with a knife are omissions;
- b.** The version of PW-4 that he was standing at a distance of fifteen feet from the scene of occurrence is also an omission;

- c. The statement of PW-5 that PW-4 was present at the time of the incident is an omission. His statement that the deceased fell on his chest is an omission.
 - d. Both the witnesses did not report the incident to the Police. According to PW-4, he informed the incident to one Sumesh, who has not been examined;
 - e. Both the witnesses did not take the deceased to a hospital; and
 - f. Though other persons were present at the time of the incident, the said witnesses have not been examined.
8. In this case, there are material omissions which amount to contradiction. Coupled with the material omissions, if we consider the conduct of both the witnesses, their version does not inspire confidence. Once evidence of these two witnesses is disbelieved, the only remaining evidence against the appellant is of the recovery of the knife at his instance. The law relating to the evidentiary value of recovery made under Section 27 of the Indian Evidence Act, 1872 is settled by this Court in the case of ***Manoj Kumar Soni v. State of M.P.***². Paragraph 22 of the said decision reads thus :-

“22. A doubt looms: can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. **Although disclosure**

² 2023 SCC OnLine SC 984

statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.”

(emphasis added)

Therefore, in our view, the appellant's guilt was not proved beyond a reasonable doubt.

9. Accordingly, the impugned judgment and final order dated 7th September 2016 passed by the High Court of Kerala at Ernakulam, and the impugned judgment dated 9th October 2012 passed by the Court of the Additional Sessions Judge, Irinjalakuda (Trial Court) are quashed and set aside and the appellant is acquitted of the offences alleged against him. The appellant has undergone incarceration for more than twelve years. Hence, he shall be forthwith set at liberty unless he is required in connection with any other case.

10. The appeal is allowed accordingly.

.....J.
(Abhay S Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
January 29, 2025.**