A RAJAGOPAL

v.

MUTHUPANDI @ THAVAKKALAI & ORS.

(Criminal Appeal No. 1582 of 2013)

B FEBRUARY 28, 2017

[R. F. NARIMAN AND MOHAN M. SHANTANAGOUDAR, JJ.]

Penal Code, 1860:

C *s. 307 r/w ss.149 and 148 – Prosecution under – Attack with deadly weapons – By five accused – Causing 12 grave injuries – Corroborated by medical evidence – Injured eye-witness in his complaint as well as evidence stated the details as to role of each of the accused – Identified all the accused – Conviction by trial court – Acquittal by High Court – On appeal, held: The direct* D *evidence of injured eye-witness is not doubtful – High Court, without discrediting such witness, could not have acquitted the accused persons – Therefore, the view taken by High Court cannot be said to be a possible view – Acquittal order set aside – Conviction order restored.*

E *Criminal Trial:*

Motive – Evidentiary value of – Held: Where there is direct evidence, motive does not have to be established.

Allowing the appeal, the Court

F **HELD: 1. PW-1 has unequivocally stated both in his complaint and in evidence tendered before the Court, which has not been shaken in cross, that the five accused persons, after shouting and abusing him, assaulted him with deadly weapons. Not only has he identified all five, but he has also stated with** G **great clarity, the role of each one of them as to what exactly each one shouted and which weapon was wielded on which specific part of his body. There can be absolutely no doubt having regard to this direct evidence that from the weapons used and from what was shouted and from the nature of the injuries, the common object of this unlawful assembly was to kill PW-1. [Para 6] [87-**
H **E-F]**

2. Without discrediting the evidence of PW-1, the injured witness, the judgment of the High Court has crossed the line of non-interference in acquittals, namely, that it is not a possible view. [Para 5] [87-D]

3. In view of the direct evidence of PW-1, which has not been adverted to or disbelieved by the High Court, the delay of eight hours in the filing of the FIR can be disregarded. [Para 7] [87-G, 88-A]

4. Motive does not have to be established where there is direct evidence. Given the brutal assault made on PW-1 by criminals, the fact that witnesses have turned hostile can also cut both ways, as is well known in criminal jurisprudence. [Para 9] [88-D-E]

5. Therefore, the view taken by the High Court is not a possible view and the acquittal of the five accused persons is set aside and the conviction and sentence imposed upon them by the Trial Court is restored. [Para 10] [88-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1582 of 2013

From the Judgment and Order dated 25.02.2010 of the High Court of Madurai Bench of Madras High Court in Crl. A. No. 268 of 2005.

V. Prabhakar, T. R. B. Sivakumar, Advs. for the Appellant.

V. Kathirvelu, Sr. Adv., P. V. Yogeswaran, Ms. V. Susheatha, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. The facts in the present case are as follows:-

i) Five accused persons, armed with deadly weapons, attacked and injured Rajagopal (PW-1) at about 2.30 p.m. on 06.11.1999, who was standing at the Kandavilai bus stop, causing at least 12 grave injuries which involved fracture of his skull, fracture of the bones of both legs as well as on the wrist. Subsequently, PW-1 suffered amputation of both legs as a consequence of the attack suffered by him.

ii) The prosecution has examined as many as 19 witnesses, and Rajagopal (PW-1), the Complainant himself, has, both in his complaint and evidence, (which was not shaken in cross-examination), stated in detail as to the role of each of the accused.

A iii) It may be mentioned here that all the accused were identified by him, and accused No.1 abused him and stated "hack him to death. Let him die and get lost." Accused No.2 hacked at his left arm left hand elbow with a sickle after which accused No.1 hit him on his head with a sickle and further injured him by hacking at the left lateral malleolus. Accused
B No.3, another son of accused No.1, hacked at PW-1's right loin and back and also injured him by hacking at his right lateral malleolus. Accused No.4 hit his chin with a sickle, and accused No.5 hacked at his ring and middle fingers on the left hand and ring finger on the right hand with a sickle.

C iv) The medical evidence corroborates the fact that there were twelve serious injuries together with the skull bone cracked and legs and hands fractured. PWs 3,4,5,8 and 14, who were examined to speak of the arrest, confession and recovery of weapons from the accused, have turned hostile. Even PW-6, the sister of PW-1 who was engaged to speak on behalf of the prosecution as to the motive for the alleged attack,
D has turned hostile. PWs 7 and 13, witnesses to the mahazar, have also turned hostile.

v) The Additional District Judge, Fast Track Court No.II, Tirunelveli, convicted all the five accused persons under Section 148 and Section 307 read with 149 of the I.P.C. and sentenced them to seven years
E imprisonment with fine of Rs.5,000/ each.

vi) The High Court has reversed the finding of the Trial Court, giving five reasons as to why in a case, like the present one, the conviction should be upset. This is despite the fact that PW-1, the complainant, an injured eye witness who was lived to tell the tale, had deposed as
F aforesaid.

2. Mr. V. Prabhakar, learned counsel appearing on behalf of the appellant-Complainant, has addressed us. His argument is that the five circumstances mentioned by the High Court not only have answers to each of them which are largely given in the Trial Court judgment, but
G has also argued that without disturbing the evidence of the injured eye witness, the High Court could not possibly have come to the conclusion that the five persons convicted by the Trial Court ought to be acquitted.

3. According to the learned counsel, PW-1 has, in his evidence, identified each one of the accused and has stated each one's specific
H role in injuring him. Lethal weapons have been used, and it is obvious

that the intention was to kill PW-1. Fortunately, for him, since the incident took place at 2.30 p.m. in the afternoon, in a busy place, and because he shouted at the accused and there were people around, the five accused ran away. A

4. On behalf of the five accused persons, we have heard Mr. Kathirvelu, the learned senior counsel, who has argued that each one of the five circumstances mentioned by the High Court, particularly, the point of delay would go to show that there were a large number of lapses on the part of the prosecution and that, therefore, the five circumstances mentioned by the High Court would at the very least lead to there being a reasonable doubt. We were also told that, this being a case of acquittal, since the High Court's view was a possible view, we should not interfere under Article 136 of the Constitution. B C

5. Having heard the learned counsel for both the parties, we are of the view that without discrediting the evidence of PW-1, the injured witness, the judgment of the High Court has crossed the line of non interference in acquittals, namely, that it is not a possible view. Given the direct evidence of PW-1, as has been pointed out by learned counsel appearing for the Complainant, the impugned judgment cannot be sustained. D

6. As has been stated earlier, PW-1 has unequivocally stated both in his complaint and in evidence tendered before the Court, which has not been shaken in cross, that the five accused persons, after shouting and abusing him, assaulted him with deadly weapons. Not only has he identified all five, but he has also stated with great clarity the role of each one of them as to what exactly each one shouted and which weapon was wielded on which specific part of his body. There can be absolutely no doubt having regard to this direct evidence that from the weapons used and from what was shouted and from the nature of the injuries, the common object of this unlawful assembly was to kill PW-1. E F

7. However, according to the High Court, the FIR was registered after some delay namely, at 10.45 p.m. at Radhapuram Police Station, that is roughly eight hours after the incident. The Trial Court has adverted to the reason for the delay as being information and communication loss. The information first went from Kottar Government Hospital to the Kottar Police Station and thereafter to the Radhapuram Police Station. The finding of the Trial Court is that the reason for the delay is on the part of the police officials. Whether this is in fact so is not necessary for us to G H

A decide finally, inasmuch as the direct evidence of PW-1, which has not been adverted to or disbelieved by the High Court, is sufficient for us to disregard this delay of eight hours in the filing of the FIR.

8. We were also told that the page of the General Diary relating to 06.09.1999 was torn. This, by itself, leads us nowhere. The High Court B adverts to the fact that the complaint does not bear any communication that the concerned officer recorded the same, and that it bears the endorsement of the S.I. Pandian. Here again, the Trial Court dubs this as a mistake by stating that instead of saying "received by me and registered a case" it was stated "recorded by me and registered a case". Such a mistake in any case would not be fatal given the fact that C PW-1 has himself given direct evidence of the incident. Points 3 to 5 mentioned in the High Court, namely, that nobody has been examined from residences and shops nearby; and that no taxi driver has been examined since PWs 1 and 2 claim to have gone to hospital in a taxi; and that the motor cycles on which the accused drove are not seized, all D pales into insignificance once direct evidence is available.

9. Equally, it is well established that motive does not have to be established where there is direct evidence. Given the brutal assault made on PW-1 by criminals, the fact that witnesses have turned hostile can also cut both ways, as is well known in criminal jurisprudence.

E 10. Given the fact that stares one in the face, namely, that the High Court has not at all dealt with the direct evidence of PW-1 and given the fact that such evidence has stood the test of cross-examination, we are constrained to observe that the view taken by the High Court is not a possible view and we therefore set aside the acquittal of the five F accused persons and restore the conviction and sentence imposed upon them by the Trial Court.

11. Accordingly, the appeal is allowed in the aforesaid terms.

12. The respondents are directed to surrender before the concerned Court within a period of two weeks from today to serve out G the remainder of sentence imposed by the Trial Court.

Kalpana K. Tripathy Appeal allowed.

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