2024 INSC 474

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1473 OF 2024
(ARISING OUT OF SLP (CRL.) NO.2756 OF 2019)

P. SASIKUMAR **...APPELLANT**

VERSUS

THE STATE REP. BY THE INSPECTOR OF POLICE **...RESPONDENT**

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The appellant before us has challenged the order dated 12.01.2017 of the High Court of Madras which has upheld the conviction of the appellant under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') as well as under Section(s) 449, 404 and 201 r/w 302 IPC. He has been, *inter alia*, sentenced for life imprisonment under Section 302 IPC.

2. It was a brutal murder of a 14-year-old girl committed inside her house on the night of 13.11.2014, allegedly by two

accused, one of them being the present appellant before this Court. There is no direct evidence of the crime although there is both ocular as well as forensic evidence placed by the prosecution to prove the murder of the 14-year-old girl, at the hands of the present appellant and another accused, who is accused no.1 and also the main accused. The present accused is accused no.2.

3. The case of the prosecution is largely based on circumstantial evidence. FIR No.408/2014 was lodged on 13.11.2014 at police station Alagapuram by PW-1 Durairaj, who is the father of the deceased. The complainant states that he is working as a Manager at JSP Granite Company at Salem, Tamil Nadu and he has two daughters. The elder daughter had studied engineering from Mahendra Engineering College and is now working in L&T Company, Chennai. His younger daughter was studying in the 8th standard in a local school in Salem. His wife is working as an accountant in a private company. On 13.11.2014 his wife had gone to Chennai to meet their elder daughter as she was not well. The younger daughter (deceased) was alone in the house. That day he had called his younger daughter about 2-3 times, in order to remind her to receive her tiffin but she did not answer his

call. He had then made up his mind to return to his house early. When he was climbing the stairs of his house at about 07:15 p.m., after parking his scooter, he saw a person aged about 25 years, walking down the stairs. This man had a helmet in his hand, which he immediately wore on seeing the complainant. He found the door of his house open and his daughter was bleeding profusely from her neck. Meanwhile, neighbors had gathered on hearing his cries and they informed him that two persons had come to his house who had brutally killed his daughter. The deceased was still alive was rushed to the hospital where she was declared dead.

4. The post mortem was conducted on the body of the deceased by Dr. K. Gokularamanan (PW-14) at 10:30 a.m. next day on 14.11.2014 and the following antemortem injuries were found on the deceased –

> *"1. A well extended broad cut injury on the front side of neck and on both sides extending up to the upper side of Thyroid ligament bone measuring a depth of 14 x 6 up to the depth of the bone and the neck spinal bone present in the underside of injury, Adams apple, muscles and blood vessels were seen on the edges of the injury and blood outflow was seen in the surrounding areas.*
>
> *2. On the right hand side of the aforesaid injury a cut injury on the lower and outer side was seen which extended up to the backside of neck measuring 12 x 4 depths in the*

muscles and blood outflow was seen in the surrounding areas. No other injuries were seen on the external parts of the body."

According to the postmortem report, the cause of death was shock due to the antemortem injuries on the neck and profuse bleeding and the time of death was 12-18 hours prior to the post mortem.

5. Meanwhile the FIR was registered as Case Crime No.408/2014. The two accused were apprehended by the Police on 15.11.2014, at about 10 p.m.

6. Recoveries were made during the investigation on their pointing out which is as follows :-

From the pointing out of accused No. 1 :-

A black colour Pulsar Vehicle without registration number, a black colour helmet, a black colour cell phone with broken glass, a knife with a maroon handle and a checkered blood-stained shirt were recovered.

From pointing out of accused No. 2 i.e. present appellant :-

A dark green monkey cap, a Samsung Galaxy Pro Cell Phone, a blood-stained elephant-coloured jeans and a white/green shirt were recovered.

7. At this juncture, we must also record that although there are two accused in the case and, both were charged for the above

offences and faced the trial and were convicted by the Trial Court under Section 302 read with Section 34 IPC apart from other offences such as 449, 404 and 201 r/w 302 IPC, yet there is no record, before this Court of any appeal being filed before the High Court by accused no. 1 who also stands convicted and sentenced for the same offences like the present appellant. This is also mentioned by the High Court while deciding the appeal that they have before them only the criminal appeal of accused No. 2 i.e. the present appellant-Sasikumar, and the court is not aware of any Criminal Appeal being filed by accused no.1 – Yugadhithan. Before us, thus, is only accused no. 2. Accused no.1, who is the main accused inasmuch as it was accused no.1 against whom the prosecution additionally has a case of motive to commit this murder.

8. The prosecution case is that when Harini (PW2)-the elder sister of the deceased was a student in Mahendra Engineering College, accused no. 1 (Yugadhithan) was also studying in the same college and was totally infatuated by her. His feelings were never reciprocated by the elder sister of the deceased. It is because of this reason that he was enraged and had even started stalking the elder sister of the deceased. He had even

reached her present place of work L&T Company at Chennai, causing much anxiety to her. PW2 had also complained against accused no. 1 to the principal of Mahendra Engineering College earlier stating that he had been harassing her. The prosecution case further, is that accused no. 1 had threatened the elder sister of the deceased warning her that if she does reciprocate his feelings, he would kill her entire family.

9. But the one who is before us today and whose conviction stands confirmed by the High Court is not accused No.1 but accused no.2. The entire question before us here is of identification of accused no. 2. From all available evidences which the prosecution has placed before the Trial Court, *inter alia*, in the form of PW-1 and PW-5 have stated that accused No.2 i.e., the present appellant was seen by them wearing a "green colored monkey cap". When this accused had entered the premises, when he knocked the door of the house of the deceased, when he was coming down from the stairs along with accused no.1 and at all other relevant times the witnesses who have seen and identified the accused no.2 i.e., the present appellant, had seen the appellant for the first time on 13.11.2014 while he was wearing a green colored monkey

cap. None of them had seen him earlier. PW-5 who is the closest witness in this case states as under :-

> *"...I know Duraiaj. It could be 6.30 hours in the evening on 13.11.2014. At that time I was taking good water in balcony at that time a person went wearing monkey cap. Another person went wearing a helmet. The time could be 6.35, 640 hrs in the evening. They both knocked the door of Tejashree house and went inside the house. They both were found talking inside in a sofa. They are the present accused. They were asking phone number with Tejashree for that Tejashree has told them that father has gone out and he has to come. Both the accused and Tejashree were found to be talking. After taking water I went to my home. I informed my house by around 7.00 hrs in the evening that I am going to super market. Later I came back by 7 .25 hrs at that time Sun News was under broadcast when I parked my vehicle and climbed stairs Durairaj came behind me. When I placed the articles in home within 5 minutes I heard the sound of Durairaj. Immediately I went to Durairaj House. After tearing the cloth he was shouting from the place where his daughter was lying. I told Durairaj that 2 person came and went half an hour prior to that. I told Durairaj that they both kept Tejashree sitting and was talking with her. Immediately call was made to ambulance..."*

PW-5 is said to have identified the accused later when both the accused were apprehended by the police and were in the hospital. In other words, while these two accused persons were in the custody of the police this particular witness PW-5 was taken to the hospital where he had identified the two accused. This so-called identification, on which much reliance has been

placed by the prosecution, was made by PW-5 in the hospital by way of a statement to the police, and it can only be read as a statement under Section 162 of the Criminal Procedure Code which can only be used for the limited purpose as provided under Section 162 of the CrPC itself.

The case of the prosecution is that both the accused were apprehended on 15.11.2014 near the Salem-Coimbatore bye pass fly over. The recovery of incriminating material such as motor bike, weapon, the monkey cap, helmet, clothes etc. were made on the same day. In other words, when the accused were in judicial custody, there is nothing on record to suggest that the investigating officer or the investigating team had taken any permission from the Magistrate for the release of the accused for these recoveries. These recoveries therefore, have no relevance. At this juncture, we must reiterate that our observation in this case and our finding and conclusions are based only on the evidences and the material which is available against the present appellant, it should not be construed in any manner as a finding or a comment on the case of accused no. 1 who is not before us and evidently against whom the prosecution has some more material, including motive. There is also no motive against the present appellant. In fact, the

Pulsar bike which has been recovered on pointing out of accused no.1 does not belong to the appellant but was purchased by a person named 'Satish' from the showroom and this person 'Satish' has never been questioned by the police or produced as a prosecution witness during the trial.

10. The admitted position in this case is that the test identification parade (hereinafter referred to as 'TIP') was not conducted. All the prosecution witnesses who identified the accused in the Court such as PW-1 and PW-5 were not known to the present appellant i.e., accused no.2. They had not seen the present appellant prior to the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/accused No. 2 on the date of the crime while he was wearing a "green colour monkey cap"!

11. Now, as one is familiar a monkey cap covers the entire face, chin and cheek of a person, leaving only his eyes and nose and part of forehead exposed. These two witnesses (PW-1 and PW-5), had seen the appellant wearing a monkey cap and that too from a distance. Under these circumstances, TIP had become necessary particularly when both the accused, who are alleged to have committed this murder were arrested within two days. The incident is of about 7:00 pm on

13.11.2014 and both of them were arrested at around 10 pm on 15.11.2014. The case of the prosecution is that while they were being arrested, they received injuries as they tried to escape and consequently, they were taken to the Hospital for treatment. It was in the hospital, that PW-1 i.e. father of the deceased and the complainant and PW-5 were taken by the Investigating Officer who are said to have identified the two accused as the one who had committed the crime. No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done. In fact, the High Court has recorded this flaw in the investigation at more than one place in its judgment. It has again observed that the Investigating Officer (PW-24) was before the Court and in spite of being questioned as to what the reasons were for not holding TIP in this case, no satisfactory reply was given by him.

12. It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has been made in Court by PW-1 and PW-5.

The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper. However, the High Court has believed the testimony of PW-5 who has identified accused no.2 under similar circumstances! The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: ***Kunjumon*** *v.* ***State of Kerala*** **(2012) 13 SCC 750**).

13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of ***Rajesh*** *v.* ***State of Haryana*** **(2021) 1 SCC 118** and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

14. The relevance of TIP has been explained by this Court in a number of cases **(Please see: *Ravi Kapur* *v.* *State of Rajasthan* (2012) 9 SCC 284[1], *Malkhansingh and Ors.* *v.* *State of Madhya Pradesh* (2003) 5 SCC 746[2]).**

15. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of ***Jayan*** *v.* ***State of Kerala*** **(2021) 20 SCC 38** and ***Amrik Singh v. State of Punjab (2022) 9 SCC 402***. In **Jayan** (supra), this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words:

> *"It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy…."* *(Para 18)*

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[1] Para 35
[2] Para 16

16. Under these circumstances, we hold that the identity of the present appellant is in doubt. The appellant could not have been convicted on the basis of a very doubtful evidence as to the appellant's identity. The appeal is allowed and the impugned order of the High Court dated 12.01.2017 is hereby set aside. The appellant has been in jail for about 8 years as we have been told at the Bar, he shall be released forthwith unless he is required in some other case. We make it absolutely clear that this decision of acquittal is based on the evidence, or lack thereof, which the prosecution has against accused no. 2 i.e. the present appellant. This will absolutely have no bearing on the case of accused no.1.

.....J
[SUDHANSHU DHULIA]

.....J.
[PRASANNA B. VARALE]

New Delhi
July 8, 2024