IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 851 OF 2011

DINESH B.S. **APPELLANT**

VERSUS

STATE OF KARNATAKA **RESPONDENT**

W I T H

CRIMINAL APPEAL NO. 852 OF 2011

O R D E R

1. These two appeals are filed by the accused No. 1 ("A-1") (Kadira Jeevan) and accused No. 3 ("A-3") (B.S. Dinesh) who are challenging the decision of the High Court dated 28.07.2009 in Criminal Appeal Nos. 1528 of 2006 and 1529 of 2006. The two appellants are convicted for the offence under Section 302 read with Section 112 read with Section 34 IPC and sentenced to, *inter alia*, life imprisonment. The third accused i.e., accused No. 8 ("A-8") (M.C. Ganesh @ Ganeshwara), who was ascribed the role of shooting the deceased, had filed the appeal [SLP (Crl.) @ Crl. M.P. No. 3784 of 2013] but the same was dismissed by this Court on 01.04.2013.

2. We have heard Mr. Dama Seshadri Naidu, learned senior counsel along with Mr. Pai Amit, learned counsel appearing for A-1. A-3 is represented by Ms. N.S. Nappinai, learned counsel, assisted by Mr. Balaji, learned counsel. The respondent - State of Karnataka is represented by Mr. Nishant Patil, learned AAG.

3. The case set up by the prosecution is that on 06.08.1994 at about 10:30 p.m., the accused persons committed the murder of one Shanmugam by shooting him down with a SBBL shot and the gun is stated to have been fired by A-8.

4. As many as 18 accused were arrayed for trial before the Sessions Court where 49 witnesses were examined, 51 Exhibits were marked together with 18 Material Objects produced by the prosecution. No witness was presented on behalf of the defence. The trial court ordered conviction of accused No. 8 under Section 302 IPC read with Section 25 of the Arms Act, 1959. The accused Nos. 1 to 7 were convicted under Section 302 read with Section 112 IPC. All the accused were acquitted of charges under Sections 143 and 120-B of IPC. The learned trial court noted that no charge was framed under Section 149 IPC.

5. In the appeal that was filed before the High Court by accused Nos. 1 to 8, the conviction of the A-1, A-3 and A-8 were confirmed and noting their conviction under Section 302 of IPC, the Court awarded the sentence of life imprisonment by enhancing it from four years as was ordered by the trial court. The conviction of A-8 (to whom the role of shooting down the deceased was ascribed) was additionally confirmed under Section 25 of the Arms Act, 1959. However, the High Court acquitted the accused Nos. 2, 4 to 7, by giving them the benefit of doubt.

6. Before the trial court, PW-1, PW-2, PW-14, PW-18, PW-30, PW-31 and PW-39 were presented as eye-witnesses but of these, PW-14, PW-18, PW-30, PW-31 and PW-39 were declared to be hostile witnesses. It is relevant to note that the deceased had five brothers, namely, (1) T.R. Natraj, (2) T.R. Murgesh, (3) T.R. Mohan Kumar, (4) Shravana, (5) Gururaghavendra. The incident according to PW-1 and PW-2 occurred at about 10:50 hours on 06.08.1994, when the Ambassador car belonging to PW-22 (declared hostile) allegedly came and stopped near a Bus stop, at some distance from the crime scene. The accused Nos. 1 to 8 got down from the car, had some conversation and thereafter left in the car. According to PW-1, he noticed a SBBL gun in the hands of A-8. The car thereafter turned around and slowed down near the Sumukh Ice Cream Parlour operated by the deceased Shanmugam and from the rear seat of the car, A-8 fatally shot down the deceased and thereafter the car reportedly sped away. The motive for the crime is attributed to a *galata* between the accused and the deceased who apparently supported the auto drivers on the issue of "seat adjustment" at a Video Film Parlour in the concerned area. Political rivalry was also suggested as possible motive.

7. The PW-1 is one of the younger brother (not youngest) of the deceased and in the testimony of the elder brother, Murugesh (PW-40), it is stated that the residence of PW-40 is at a distance of about half a kilometer from the house of the deceased. At about 11:00 p.m., the witness's youngest brother came and informed that

some persons fired the gun from a car, killing Shanmugam, one of the brother. In another part of his testimony, the PW-40 mentioned that when his youngest brother informed about the incident in the house, the family members including Nataraj (PW-26), Shravana (PW-1) and Usharani were present in his house which as noted earlier is at a distance of about half a kilometer from the place of occurrence. The evidence of Murugesh (PW-40) would create doubt on the credibility of the evidence of PW-1 as the person who testified as an eye-witness of the shooting incident. It is quite possible that PW-1 may have carried the injured brother to the hospital but because of the evidence of his own brother (PW 40), it is not conclusively established that PW-1 was an eye-witness to the shooting incident.

8. The testimony of PW-1 is primarily made the basis for the conviction of A-1 and A-3 for the crime with whose appeals we are concerned with in the present proceedings. The PW-2 who is also shown as an eye-witness, is a close confidant of PW-1 but nowhere, in his testimony, PW-2 had mentioned about the presence of the other eyewitness PW-1, in the scene of crime when the incident took place. Therefore presence of PW-1 at the time of the shooting at the place of incident is difficult to accept on account of the testimony of PW-2 and also PW-40, the brother of the PW-1.

9. As was noted earlier, there were several occupants in the Ambassador car which was seen at the place of occurrence and B.S. Dinesh (A-3) is shown by the prosecution to be the driver of the

car. According to the prosecution, the car driven by A-3 had slowed down and soon after the shooting, had sped away and this is primarily the basis to rope in A-3, for the shooting carried out by A-8. There can be multiple reasons for a car to slow down and when shooting happens in the vicinity, the natural instinct for anyone would be to leave the scene as quickly as possible. Therefore merely because the car had slowed down and then sped away after the shooting without anything further, cannot be the basis to rope in A-3 who was the driver in the car. It would not attract common intention for all the occupants in the car when the shooting was carried out by A-8. In fact, all the other occupants in the car were given the benefit of doubt and were acquitted. In a situation like this with the same set of evidence, such benefit of doubt in our opinion should have also been given to A-3.

10. The High Court in the impugned judgment while noting the discrepancy in the evidence between PW-2 and PW-1, further noted that it is the PW-1 who had lodged the FIR stating that he is a witness to the incident. According to the evidence of PW-8 i.e., the Doctor, it is the PW-1 who had brought the deceased to the hospital. Testing the said evidence with the contrary testimony of PW-40 who stated that PW-1 was with him in his house (half a kilometer away) when his youngest brother (not PW-1) conveyed the information, the Court said that it might be out of sheer inadvertence. Such assumption could not have been so lightly drawn by the High Court to convict the accused for murder, by brushing

aside the inconsistent testimony of PW-1 with the testimony of his own brother i.e., PW-40 by saying that it could be a matter of sheer inadvertence. Such assumption by the High Court we feel is unwarranted particularly in a situation where the prosecution must prove the case beyond all reasonable doubt.

11. That apart, the evidence of the Doctor (PW-8) also cannot support the claim of PW-1 being an eye-witness to the occurrence. Firstly, the Doctor was called by the Ward boy when the injured was brought to the hospital and he had no occasion to observe who brought in the shooting victim after the incident, to the hospital. Therefore, the testimony of the Doctor can in no way confirm the claim of PW-1 to be an eye-witness of the incident or as the person, who brought the victim to the hospital.

12. If the evidence of PW-1 as an eye-witness is discarded, the presence of A-3 inside the car or as a driver of the car also raises some doubt. When PW-1 was actually with his brother (PW-40) in the residence of the later, at half a kilometer distance from the place of occurrence at a time, when the youngest brother, Gururaghavendra had informed about the incident to PW-40 in his residence, the claim of PW-1 being an eye-witness appears to be doubtful and the same cannot be the basis of sustaining the conviction of either of the accused.

13. Let us now discuss the evidence on the basis of which the conviction of A-1 is sustained by the High Court. The only role

ascribed to the appellant - Kadira Jeevan was that he was an occupant of the car which had several other passengers. All the other passengers barring A-8, who has fired the gun, were given the benefit of doubt and were acquitted by the High Court. However, conviction of A-1 is sustained primarily on the basis of testimony of PW-21. The PW-21 is one B.G. Anantha Shayana who claims to be associated with one Kannada Daily newspaper published from Madikeri. At the relevant time, he claims that he was working as correspondent of the said newspaper which was founded by his father. According to PW-21, as a Correspondent of the newspaper, he visited the District Jail at Madikeri and conducted interview with A-1 and A-8 inside the Jail premises. He claims that both the accused made statements before him pointing their role in the incident. On this basis, the PW-21 wrote that version of the incident and published that in the Kannada newspaper. However, when we read carefully the testimony of PW-21, it is seen that it was Ravindra, the Sub-Editor of the paper (who also was in the jail premises) who did the interview with A-1 and A-8. Pertinently it was Ravindra, who was talking with two accused while the PW-21 was talking with some other under-trial prisoners, whose names were furnished to the correspondent by the local MLA. According to PW-1, he had partially overheard the utterances of A-1 and A-8 in reply given to the Sub-Editor Ravindra. The PW-21 in his own words, had stated that he could not hear the details and the reply given by A-1 and A-8, to the Sub-Editor Ravindra. Curiously, Ravindra, who actually had the conversation with A-1 and A-8, was not

produced as a witness in the trial although it is he who could have given evidence on what might have been said by A-1 and A-8. To base the conviction of the A-1 on the testimony of PW-21 would in our opinion be unmerited as PW-21 had no direct conversation either with A-1 or with A-8 as per his own version and was talking with some other under-trial prisoners at the relevant time in the jail premises.

14. The High Court while adverting to the evidence of PW-21 noted that A-1 and A-8 had made extra-judicial confession inside the jail about causing death of Shanmugam, because of political rivalry. While noting that the prosecution has not produced the jail records to prove the visit of PW-21 to the jail, only because PW-21 had reported the interview and the so-called extra-judicial confession of A-1 and A-8 in his newspaper, the Court had decided to base the conviction of A-1 on the evidence of PW-21. Surprisingly, the High Court noted that the newspaper report regarding extra-judicial confession carries greater credibility because the information is made open to public at large. In the context, the argument advanced by the defence that PW-21 did not directly hear the extra-judicial confession of the two accused was brushed aside as untenable only because there was a newspaper report by the PW-21 on the alleged extra-judicial confession.

15. To show the error in the reasoning of the High Court on laying much credibility on the newspaper reports, the learned Senior Counsel Mr. D. Seshadri Naidu quoted Mark Twain who said, "If you

don't read the newspaper, you're uninformed. If you read the newspaper, you're misinformed.". In the facts of the present case, this Court is inclined to accept the submission of the learned Counsel that an extrajudicial confession cannot be given greater credibility only because it is published in a newspaper and is available to the public at large. It is well-established in law that newspaper reports can at best be treated as secondary evidence. This Court in *Laxmi Raj Shetty & Anr.* v. *State of Tamil Nadu*, (1988) 3 SCC 319 held that:

> **"25. …..We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspapers is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under s. 81 of the Evidence Act to a newspapers report cannot be treated as proved of the facts reported therein."**

16. Even if we assume that A-1 and A-3 were present in the car when A-8 had shot at the deceased, common intention or conspiracy between A-8 who fired the shot and A-1 and A-3 cannot really be inferred on the basis of the materials on record. All the other occupants of the car were given the benefit of doubt. The same evidence was relied upon by the Court to acquit the other appellants in the High Court but similar parity benefit was not shown to A-1 and A-3. This we think was an erroneous approach by the High Court.

17. In our considered opinion, the appellants have succeeded in making out a case of inadequate evidence to sustain their

conviction under the impugned judgment of the High Court. Accordingly, having regard to the above discussion and also the unacceptable evidence, we deem it appropriate to order for acquittal of both Kadira Jeevan (A-1) and B.S. Dinesh (A-3). The appeals are accordingly allowed. The bail bonds, if furnished by them, shall stand discharged.

18. Pending application(s), if any, shall stand closed.

.....J.
(HRISHIKESH ROY)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
JULY 27, 2023.

ITEM NO.101 COURT NO.9 SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 851/2011

DINESH B.S. APPELLANT

VERSUS

STATE OF KARNATAKA RESPONDENT

WITH

Crl.A. No. 852/2011 (II-C)
(FOR ON IA 1692/2011)

Date : 27-07-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) **Mr. Dama Seshadri Naidu, Sr. Adv.**
Mr. Pai Amit, Adv.
Ms. Pankhuri Bhardwaj, Adv.
Mr. Nitesh Ranjan, AOR
Mr. Abhiyudaya Vats, Adv.
Ms. Vanshika Dubey, Adv.
Mr. Kushal Dube, Adv.
Ms. Divya Narayan, Adv.

Ms. N.S. Nappinai, Adv.
Mr. V. Balaji, Adv.
Mr. S. Shivakumar, Adv.
Mr. Atul Sharma, Adv.
Mr. C. Kannan, Adv.
Mr. Nizamuddin, Adv.
Mr. Asaithambi MSM, Adv.
Ms. Astha Tyagi, AOR

For Respondent(s) **Mr. Nishanth Patil, A.A.G.**
Mr. V. N. Raghupathy, AOR
Mr. Manendra Pal Gupta, Adv.
Mr. Ayush P Shah, Adv.
Mr. Varun Varma, Adv.

Mr. Nishant Patil, A.A.G.
Mr. Shubhranshu Padhi, AOR
Ms. Rajeshawari Shankar, Adv.
Mr. Jay Nirupam, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed order. The operative part of the order reads as under:

> **"17. In our considered opinion, the appellants have succeeded in making out a case of inadequate evidence to sustain their conviction under the impugned judgment of the High Court. Accordingly, having regard to the above discussion and also the unacceptable evidence, we deem it appropriate to order for acquittal of both Kadira Jeevan (A-1) and B.S. Dinesh (A-3). The appeals are accordingly allowed. The bail bonds, if furnished by them, shall stand discharged."**

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)