

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.900 OF 2010

SHANMUGAM**Appellant(s)****VERSUS****STATE BY INSPECTOR OF POLICE,
TAMIL NADU****Respondent(s)**

J U D G M E N T

S. ABDUL NAZEER, J.

1. This appeal by special leave is filed against the judgment dated 26.02.2008 in CrI. Appeal No.508 of 2007 passed by the High Court of Judicature at Madras, wherein the conviction of the present appellant was upheld and his appeal was dismissed.

2. Brief reference to the facts as per the prosecution are necessary for the disposal of this case. The appellant was arrested by PW-1 Sub-Inspector of Police on 09.09.2005 at about 7:30 p.m. for offences punishable under Sections 51 r/w

63, 52 A r/w 68-A and 65 of the Copyright Act, 1957. He was then brought to the Office of the Video Piracy Cell at 11:30 p.m. and was kept in custody in the same room as that of the Head Constable Kaliappan (deceased). On 10.09.2005, the appellant made an attempt to escape from the custody by attacking the deceased on his head with an iron stool causing his death. However, he was caught by PW-1 (the Sub-Inspector of Police) and PW-2 (the Head Constable) while attempting to escape.

3. Upon investigation, a charge-sheet was filed against the appellant and the case was committed to the learned Additional Sessions Judge, Fast Track Court No. II, Coimbatore in S.C. No.19 of 2006. The appellant pleaded not guilty and claimed trial. After considering the arguments and analysing the evidence on record, the learned Additional Sessions Judge convicted the appellant for the offences punishable under Section 302 of I.P.C. and under Sections 224 r/w 511 of I.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.500/-. Further, in default thereof to undergo rigorous imprisonment for one month for the offence under Section 302 of I.P.C. and to undergo rigorous

imprisonment for one year for the offence under Section 224 r/w 511 of I.P.C.

4. Aggrieved by the order of conviction, the appellant appealed before the High Court being Crl. Appeal No.508 of 2007. On 26.02.2008, the Division Bench of the High Court after thorough analysis of facts and circumstances confirmed the conviction of the appellant and dismissed the appeal. Being aggrieved the appellant has approached this Court by way of Special Leave to Appeal (Crl.) No.4700/2009.

5. The learned Counsel Mr. V. Ramasubramanian, appearing on behalf of the appellant, has contended that the case of the prosecution is based upon circumstantial evidence alleging that there is no circumstance pointed out by the prosecution to prove the guilt of the accused-appellant beyond all reasonable doubt. Thus, he argues that the conviction on the basis of the assumptions is not sustainable in law.

6. On the other hand, the learned Counsel Mr. M. Yogesh Kanna appearing on behalf of the State while supporting the judgment of the High Court, has contended that this Court should take a wholesome view instead of viewing circumstances in isolation in order to conclude whether a

complete chain of events has been proved by the prosecution or not.

7. We have carefully considered the submission of the learned counsel for the parties and perused the impugned judgment and other materials placed on record.

8. It is not in dispute that the appellant/accused was arrested by the then Sub-Inspector of Police (PW-1), Video Piracy Cell, at 7.30 p.m. on 09.09.2005 and at that time the deceased was with him. The evidence of PW-1 discloses that at the relevant point of time, the deceased did not have any residence. Therefore, he requested PW-1 to permit him to stay in the office (Video Piracy Cell) along with the accused where the accused was brought. PW-6 has stated that till 2.00 a.m. on 10.09.2005, PW-1 was in the office and later on left the office leaving the deceased constable and the accused inside the office by locking the door from outside as per the request of the deceased. This version of PW-1 has not been challenged in the cross-examination.

9. Since the office premises was not shown in the rough sketch (Ex.P.22), the evidence of PW-6 was also questioned. However, this is nothing but an irregularity on the part of the

I.O. PW-6 has categorically stated that he did not have residence in the nearby place. Therefore, he remained at the office to finish his pending work. Keeping in mind the above situation, we are of the view that the evidence of PW-6 cannot be doubted and if the same is accepted, the story concocted by the accused that the deceased was murdered by PW-1 is only to falsely implicate PW-1.

10. The evidence adduced by PW-1 was also corroborated by the evidence of the Head Constable (PW-2) who was accompanying PW-1 at around 7.30 a.m. on 10.09.2005. It is clear from the evidence of PW-2 that when PW-1 opened the locked door, the accused tried to escape but was caught at the spot. This deposition has also remained unchallenged in the cross-examination.

11. It is in the evidence of PW-9 that on 10.09.2005 around 2.30 a.m. she was on duty of receiving PCR calls. She deposed that on that day she received a call from the accused who informed about some commotion said to have taken place in 6th Street on 100 feet road, near Kalyan Silks. The accused did not call to attribute the commission of the offence to PW-1. This call was made deliberately to escape from the room where

he was locked. This evidence was corroborated by PW-10 who was working as an operator at that time in the police control room. After getting the information of commotion from PW-9, PW-10 passed on the message to the Sub-Inspector (PW-7) who was on patrolling duty. Accordingly, PW-7 proceeded to the place of alleged occurrence. Since nobody was there in the said place, PW-7 contacted the mobile number of the informer disclosing his identity but the same was instantly disconnected. This is evident from Ex.P.12. The said mobile number belongs to the deceased constable. The evidence of PW-7, PW-9 and PW-10 corroborated with each other in this regard. It appears that the accused had made a call to the control room by using the mobile phone of the deceased just to divert the attention of the police so that he could escape in case the locked door was opened. Perusal of Ex.P.10 shows that on receipt of the phone call, an ambulance was sent to the Street, near Kalyan Silks, which came back after waiting from 3.30 a.m. to 4.30 a.m. as nobody was found injured at the place of commotion.

12. Perusal of the evidence in its entirety clearly shows that the offence had taken place at 2.00 a.m. by which time PW-1

had already left the place of occurrence and at the relevant point of time the accused and the deceased were alone inside the premises of the office of the Video Piracy Cell. Under the above circumstance, it was for the accused to explain under what circumstances the deceased was dead. In our view, the accused has failed to offer any cogent explanation in this regard. We are of the view that the chain of circumstances has been completely proved and established beyond reasonable doubt. Therefore, we find no reason to interfere with the concurrent findings of the courts below.

13. Accordingly, this Appeal fails and is accordingly dismissed. The order of the Division Bench of the High Court in Crl. Appeal No. 508 of 2007 dated 26.02.2008 is upheld.

.....J.
(ASHOK BHUSHAN)

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

.....J.
(HEMANT GUPTA)

**New Delhi;
April 6, 2021**