REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1741 OF 2010

UDAYAKUMAR ... APPELLANT

VERSUS

STATE OF TAMIL NADU ... RESPONDENT

JUDGEMENT

SANJAY KAROL, J.

1. The Appellant Udayakumar (A-2) stands convicted by both the courts below for murdering one Purushothaman, thus having committed an offence punishable under Section 302 of the Indian Penal Code, 1860. Consequently he is sentenced to suffer imprisonment for life. However, in relation to an offence under Section 120-B of the Indian Penal Code, 1860 he stands acquitted vide impugned judgement delivered by High Court dated 15.03.2010 in

Criminal Appeal No. 17, 22 and 24 of 2010 titled as Udayakumar & Ors. v. The State of Tamil Nadu.

2. Significantly, in terms of the very same impugned judgement, the other two co-accused persons namely Panneer Dass (A-1) and Periyasamy (A-3) stand acquitted in the relation to both the offences i.e. Section 302 and Section 120-B of the Penal Code.

3. As a result, the present appeal filed by convict, Udayakumar (A-2).

4. Prosecution through the testimonies of 23 witnesses has tried to establish complicity of all the three accused on the prognosis that Panneer Das (A-1) was having business relationship with the deceased (Purushothaman). Since certain disputes and business rivalry emerged between the two, the former harboured a grudge against the latter. Resultantly, he along with A-3 hatched a conspiracy to murder the deceased and for achieving such a design services of A-2 were engaged. On 22.10.2008, at about 8:30PM, A-2 killed the victim with a sickle by giving blows

on the side of the neck. Immediately thereafter, A-1 and A-3 came in a vehicle, in which A-2 fled away from the spot of the crime which was an open public road. The incident was witnessed by Venkatesan (PW-1) who was known to the deceased. With the matter being reported to the police, FIR No. 2261 / 2008 dated 22.10.2008 was registered at Police Station, Theynampet. The investigation was conducted by Police Officer Kuppusamy (PW-23) and after recovering the body of the deceased, the post-mortem was conducted by Dr. K.Mathiharan (PW-21). Initial investigation revealed complicity of A-1 and A-3. As such, the latter was arrested on 16.12.2009, who disclosed the cause and the manner of commission of crime.

5. With the completion of investigation, challan was presented before the Court for Trial. Vide judgment dated 04.12.2009 in S.C. No. 113 of 2009 titled as State v. Panneerdass & Ors. the Ld. Trial Court, convicted all the accused in relation to the offences charged for and sentenced them to a term of life imprisonment.

6. Significantly, the High Court, by disbelieving the testimonies of the prosecution witnesses, repelling the case of conspiracy, acquitted A-1 and A-3 on all counts and only on the basis of identification of A-2 by PW-1, upheld the conviction and sentence with respect to the offence punishable under Section 302 of the Indian Penal Code. It is a matter of record that no appeal against the judgement of acquittal of A-1 and A-3 stands preferred by the prosecution / State. Hence, this Court has been called upon only to examine the guilt or innocence of A-2.

7. We may reiterate that other than the identification of A-2 being the assailant as witnessed by PW-1, there is no material on record, be it of whatsoever nature, linking the Appellant to the crime. There is no material to indicate that A-1 or A-3 hired the services of A-2 for murdering deceased Purushotaman. Further, there is no material indicating the accused to have murdered the victim with a sickle, the alleged weapon of offence. No tell-tale signs or evidence, be it of any nature, scientific or otherwise, is on record, even remotely linking the convict to the crime.

8. Examining the testimony of PW-1, we notice him to have firstly reported the matter to the police and in the FIR there is no description of the assailant, much less identity of A-2 to have been disclosed. Yet, the High Court, even while discarding the disclosure statement of A-3, convicted A-2, which in our considered view has resulted into travesty of justice.

9. This Court in the case of **Anil Phukan v. State of Assam, (1993) 3 SCC 282** has held that:

> " **3.** ... So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect..."

Examining the testimony of PW-1, we find him to be materially contradicted and his version belied through the testimony of the Investigation Officer, (PW-23). This is with regard to the identification of the accused. Whereas the

former states that he identified the accused in front of the judge, pursuant to the summons issued to him for making himself available at Pulhal Jail, Chennai for the purpose of identifying the accused, but the latter, in unequivocal terms states that, "... it is correct to say that PW-1 would give the statement that they came to know that the second accused Udayakumar had murdered Purushothaman" and that "it is correct to say that only after identifying the accused at the Police Station, they had identified the accused at the identification parade." Now, if the identity of the accused was already in the knowledge of the police or the witnesses, then we only wonder, where would the question of conducting the identification parade arise? We reiterate that the entire necessity for holding an investigation parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. **[Heera v State of Rajasthan (2007) 10 SC 175].** We may also state that the investigation parade does not hold much value when the identity

of the accused is already known to the witness. **[Sheikh Sintha Madhar v. State, (2016) 11 SCC 265].** This Court has elaborately stated the purpose of conducting the identification parade in the case of **State of Maharashtra v. Suresh, (2000) 1 SCC 471** as:

> "**22.** … We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held [vide Budhsen v. State of U.P. (1970) 2 SCC 128; Ramanathan v. State of T.N. (1978) 3 SCC 86]."

Further in **Gireesan Nair & Others v. State of Kerala (2023) 1 SCC 180,** the Court observed that**:**

> "**44**….this Court has categorically held that where the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential.
> **45.** Another crucial decision was rendered by this Court in Sk. Umar Ahmed Shaikh v. State of Maharashtra (1998) 5 SCC 103, where it was held:

> **8.** ... But, the question arises : what value could be attached to the evidence of identity of accused by the witnesses in the Court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused...."

10. If the theory of conspiracy was disbelieved by the High Court then in our considered view, there was no basis or reason to have upheld the conviction of A-2, more so, when on the basis of the very same set of evidence led by the prosecution, the principle conspirators involved in the crime were acquitted.

11. Unfortunately in the impugned judgement, there is neither any reasoning, nor any appreciation of evidence on record. We cannot convict the accused on the basis of the principles of preponderance of probability. It is our duty to make sure that miscarriage of justice is avoided at all costs and the benefit of doubt, if any, given to the accused. **[Sujit Biswas**

v. State of Assam, (2013) 12 SCC 406, Hanumant Govind Nargundkar v. State of M.P. (AIR 1952 SC 343) *and* State v. Mahender Singh Dahiya, (2011) 3 SCC 109].

12. We may also record that in the impugned judgment running into 21 pages, the High Court has extensively dealt with the theory of conspiracy and guilt of A-1 and A-3 and only in the penultimate part, that is, paragraphs 26 and 27, casually, dealt with the guilt of the A-3.

13. In our considered view, prosecution has failed to establish the guilt of the accused much less meeting the requirement of the same having been established beyond reasonable doubt.

14. In the present case before us, we find neither the chain of evidence to have been completely established nor the circumstances, conclusively pointing towards the guilt of commission of crime by the Appellant. The prosecution has failed to prove its case beyond reasonable doubt. This Court has stated essential conditions that must be fulfilled before an accused can be convicted in a case revolving around

circumstantial evidence in the landmark case of **Sharad Birdhichand Sarda v. State of Mahrashtra, (1984) 4 SCC 116.**

15. In the normal course of adjudication followed by this Court, when there is a concurrent findings of fact by the Courts below, this Court interferes only in exceptional cases or where gross errors have been committed which overlook crying circumstances and well established principles of criminal jurisprudence. **[Ramaphupala Reddy v. State of Andhra Pradesh, (1970) 3 SCC 474, Balak Ram v. State of U.P., (1975) 3 SCC 219, Bhoginbhai Hirjibhai V. State of Gujarat, (1983) 3 SCC 217].** Hence in the attending circumstances, it becomes our bounden duty to correct such findings.

16. To conclude, we state that the judgments of conviction and sentence in respect to the appellant present before us, Udayakumar (A-2), passed by the Ld. Trial Court in S.C. No. 113 of 2009 dated 04.12.2009 as affirmed by the High Court in Criminal Appeals No. 17, 22 and 24 of 2010 dated

15.03.2010 titled as Udayakumar & Ors. v. The State of Tamil Nadu are quashed and set aside.

17. Appeal stands allowed.

18. Since the appellant is already on bail, his bail bond shall stand discharged.

.....J.
(B.R. Gavai)

.....J.
(Sanjay Karol)

Dated: 16th March, 2023
Place: New Delhi