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**(2016) 07 SC CK 0109**  
**In the Supreme Court Of India**  
**Case No : Criminal Appeal No. 2332 of 2009**

Suresh

APPELLANT

Vs

State Represented By Inspector of Police

RESPONDENT

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**Date of Decision :** 14-07-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 406, 420

**Citation :** (2017) AllSCRCrI 498 : (2017) CriLJ 739 : (2016) 4 Crimes 340 :  
(2017) 2 RCRCriminal 455 : (2017) 2 RecentApexJudgments(RAJ) 612 : (2016) 7  
Scale 122

**Hon'ble Judges :** A.K. Sikri and N.V. Ramana, JJ.

**Bench :** Division Bench

**Advocate :** V. Kanagaraj, Sr. Adv., Ms. Malini Poduval, B. Karunakaran, A.  
Radhakrishnan, Advocates, for the Appellant; M. Yogesh Kanna, P.R. Kovilan, R.V.  
Kameshwaran, Advocates, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. On 23rd September, 2005, at about 6 p.m., one person known as Kumaraguru, who was a practicing lawyer, was murdered. According to the prosecution, this occurrence was witnessed by PW-1(Ganesan), who is the brother of the deceased. He immediately went to the police station narrating the details of the incident and on the basis of the statement, First Information Report (FIR) was recorded by the Investigating Officer (IO) viz., M. Kalifulla (PW-22). It was stated by him that his deceased brother was practicing as an Advocate at Usilampatti Bar. He was a subscriber in a private chit run by Pon Pandian alias Treasury Pandey, Accused No. 1 (A-1). As per the chit transaction, A-1 was liable to pay a sum of Rs. 5,15,000/- to the deceased. Out of this, only a part sum of Rs. 1,40,000/- was paid. Because of the non-payment of remaining amount, the deceased had lodged a complaint against A-1 in the Usilampatti Police Station and a case was also registered as Crime No. 1309 of 2003 under Sections 406 and 420 of the Indian Penal Code (IPC). It was further stated that pursuant to

the said registration of crime at the instance of the deceased, the Inspector of Police had inquired into the matter and questioned A-1 in the presence of his son Uma Sankar, Accused No. 2 (A-2) and his son-in-law S.Tamilraj, Accused No. 6 (A-6). At that time, A-6 issued a cheque for part of the amount that was due to the deceased and had also given in writing that he would make the balance payment and settle the dispute amicably. On this basis, the said case was closed by the Police and final report submitted in this behalf on the aforesaid settlement. However, what happened in the Police Station was taken by A-1 as his insult and, therefore, A-1 as well as his son A-2 kept on threatening the deceased and his wife (PW-12), who was a practicing Doctor with, dire consequences. It is with this motive that on the fateful date, i.e., on 23rd September, 2005 at 6 p.m., A-1 along with A-2 and A-6 and three more unknown persons came to the place of occurrence. They saw the deceased coming in his Hero Honda Motor Cycle bearing registration No. TN 58 H 5567 along with his son who was a school going boy. On seeing the deceased, the Maruti Van in which the accused persons were sitting, came and dashed in front of the motor cycle. As a result, the deceased fell down along with his son. At that stage, A-1 instigated the other accused persons to attack the deceased and kill him. A-6 also came there from a car and he also instigated others. On this, A-2 attacked the deceased with a patta knife and struck him on the right side of the jaw and the neck and also instigated other accused persons to attack the deceased. Accused No. 3 (A-3) also gave a blow on his right forehead and below right ear with patta knife which A-3 was carrying. Likewise, Accused No. 4 (A-4) stabbed the deceased on his right chest and also gave knife blow on the left side of the chest. At that time, PW-1, brother of the deceased, was present there so was Ravi (PW-2), friend of PW-1. They tried to go nearby to intervene and rescue the deceased but, at that stage, Accused No. 5 (A-5) who was armed with a sickle threatened PW-1 and PW-2 not to intervene failing which they would also suffer dire consequences. After inflicting the wounds on the person of the deceased in the aforesaid manner, all the accused persons fled from the scene of occurrence. A-1 left in his Ambassador Car, A-2, A-3 and A-5 in a Maruti Omni Van which was driven by A-4 while A-6 left in his red colour Maruti Car.

2. All the six persons were tried for the offences under Sections 147, 148, 114, 506 (ii) and 120B of the IPC read with Section 149 of the IPC. The prosecution examined as many as 23 witnesses including PW-1 and PW-2. Another purported witness PW-3, an auto-driver, was also examined who had also, allegedly, seen the occurrence. Thereafter, submissions of the accused persons under Section 313 of the Code of Criminal Procedure (Cr.P.C.) were recorded and arguments were heard by the Trial Court. The Trial Court returned the findings to the effect that A-2, A-3, A-4 and A-5 were persons who had committed the murder of the deceased. He, thus, convicted them under the aforesaid provisions and gave life sentence. Insofar as A-1 and A-6 were concerned, they were acquitted by the Trial Court. All four convicted accused persons, i.e., A-2 to A-5 filed appeals against their conviction. On the other hand, State also preferred appeals

challenging the acquittal of A-1. The complainant, i.e., PW-1 also challenged the acquittal of A-1 and A-6 by filing two separate review petitions. All the aforesaid appeals as well as review petitions were consolidated and taken up together by the High Court for hearing which have culminated in the impugned judgment dated 28.02.2008. By this judgment, appeals preferred by A-2 to A-5 have been dismissed and the conviction and sentence recorded by the Trial Court is affirmed. During the pendency of the appeal before the High Court, A-1 died. While examining the prosecution case qua the other accused persons and analysing the evidence, the High Court found that A-1 was also guilty of murder along with A-2 to A-5. Thus, even while recording his guilt, the appeal of the State and Revision Petition of PW-1 against him were treated as abated. Insofar as A-6 is concerned, his acquittal is maintained by the High Court.

3. As far as A-2 and A-3 are concerned, it appears that they have accepted the verdict of the High Court as there is no challenge to their conviction by them. However, A-4 and A-5 have challenged their conviction recorded by the Trial Court and upheld by the High Court. Insofar as acquittal of A-6 is concerned, there is no further challenge either by the State or PW-1 and, therefore, this attained finality.

4. From the aforesaid background, we are now concerned only with the conviction of A-4 and A-5 in the instant appeals. Therefore, we make it clear at the outset that the entire matter is examined from the aforesaid perspective and any discussion which would ensue hereinafter and the observations which would be made by us are confined to A-4 and A-5 and would have no concern with other accused persons, particularly A-2 and A-3, who stand convicted and in whose case the conviction order has become final.

5. Coming to the role of A-4 and A-5 (appellants herein), we may mention at the outset that they are stated to be the friends of A-2.

6. From the facts noted above, it becomes clear that the motive that is attributed is the money which was to be recovered by the deceased from A-1 and for which the deceased had filed complaint against A-1 in which he was summoned in the Police Station, where along with him A-2, son of A-1, and A-6, son-in-law of A-1, had also gone accompanying A-1. What happened was not liked by these accused persons and they treated this as an insult of A-1 because of which A-1, A-2 and A-6 wanted to take revenge and as per the prosecution, it is for this reason that they ultimately eliminated the deceased.

7. Further, it also becomes clear from the aforesaid narration of events that A-3, A-4 and A-5, been friends of A-2 had participated in the crime along with A-1, A-2 and A-6. It is significant to mention at this stage that in his first submission that was given by PW-1 to the Police, he did not name A-4 or A-5. Instead, he had stated that there was a driver who was driving the Maruti Van and the other person who had threatened PW-1 and PW-2 not to intervene when other accused persons were attacking the deceased was a person who was 30 years of age. The

description of the two persons given was that of a driver and of the other as that of a person of 30 years of age.

8. In the statement given by PW-1 in the Court, he mentioned that after his complaint was recorded and the IO (PW-22) came to spot for inquest, even before the inquest proceedings started, he came to know the names of A-4 and A-5 who were stated to be a driver and another as a 30 years old person and told PW-22 those names, viz., Pandiyarajan and Suresh.

9. However, even in the inquest report which was prepared by the IO, these names are not mentioned. The IO, as would be stated at a later point of time, did not touch and/or suspected A-4 and A-5 and in his statement in the Court he had mentioned that PW-1 never disclosed these names at the time of inquest or even till the date he carried out the investigation. After 6-7 days, another IO took over the investigation viz, A. Suruliyandi (PW-23). At that stage, he arrested A-4 on 07.10.2005. A-5 surrendered on 13.10.2005. He recorded the statement of PW-3 who was stated to be another eye witness and who had also named these two persons. It is on this basis that A-4 and A-5 were roped in and put to crime. Needless to mention, since they are convicted by the Trial Court which conviction is upheld by the High Court, testimonies of PW-1, 2 and 3 regarding the presence and the role attributed to A-4 and A-5 have been believed by both the Courts below.

10. It was argued by learned senior counsel appearing for A-5 that there were number of material contradictions in the testimonies of PW-1 on the one hand and PW-22/23 on the other hand and, therefore, the Courts below could not have believed the version of these witnesses insofar as A-4 and A-5 are concerned. An attempt was also made to submit that the introduction of PW-3 as eye-witness does not inspire any confidence as there are many circumstances which clearly and rightly depict that he is introduced at the behest of PW-1/PW-2 or by the Investigating Officer themselves, at a later stage, just to rope in A-4 and A-5. It was also argued that the main reason for believing the testimonies of PW-1 and PW-3 was that A-4 and A-5 were identified by these witnesses in the Court. It was the submission of the learned counsel that while doing so, the Courts did not take into consideration a major flaw that had occurred in the Test Identification Parade (TIP) which was conducted inasmuch as though A-4 was arrested on 07.10.2005 and A-5 surrendered on 13.10.2005, their TIP was conducted 1? months thereafter, i.e., on 28.11.2005 and, in the meantime, photographs of these two persons, i.e. A-4 and A-5, were not only published in the newspapers but even flashed on television media. Therefore, their identity was revealed to the world at large and the very purpose of conducting the TIP had been frustrated.

11. On the aforesaid arguments which are advanced by the learned senior counsel appearing for A-5 and supported by the learned counsel appearing for A-4, we have minutely gone through the depositions of PW-1, PW-2, PW-3, PW-22, PW-23 and other witnesses. We have also heard learned counsel for the

complainant as well as learned counsel for the State who argued that the alleged contradictions pointed out by the defence were of no consequence and there was plethora of evidence to nail both A-4 and A-5 as well, as rightly done by the Courts below. For this purpose, both the counsel had taken us through the relevant portion of the judgments of the Trial Court as well as that of the High Court and the reasons which were given by the Courts below in accepting the creditworthiness of these witnesses in coming to the conclusion that the guilt against A4 and A5 had been proved beyond reasonable doubt.

12. Before we proceed to discuss the arguments advanced before us, we would like to put it on record that we are conscious of the scope of jurisdiction of this Court under Article 136 of the Constitution.

13. Two courts below have recorded findings of facts holding that culpability of A-4 and A-5 stands established. Normally, when on appreciation of evidence which is surfaced on record finding of facts are recorded, this Court is not to interfere with the same unless it is found to be perverse or where it is palpably wrong and the evidence on record did not warrant such a conclusion. This position in law has been recapitulated in a recent judgment of this Court in Mohd. Ali v. State of Uttar Pradesh, (2015) 7 SCC 272, wherein note of few earlier judgments were taken and the principle curled out in the following manner:

"12. In Arunachalam v. P.S.R. Sadhanatha and Anr., (1979) 2 SCC 297, it has been expressed thus:

"The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well-established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted 'perversely or otherwise improperly'".

[emphasis supplied]"

13. In State of U.P. v. Babul Nath, (1994) 6 SCC 29, a two Judge Bench has laid down thus:

"At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are

manifestly perverse and unsupportable from the evidence on record."

14. In *Ganga Kumar Srivastava v. State of Bihar*, (2005) 6 SCC 211, the Court after referring to series of decisions on exercise of the power of this Court under Article 136 of the Constitution culled out following principles:

"(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

(iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

15. In *Alamelu and Another v. State*, represented by Inspector of Police, (2011) 2 SCC 385, it has been stated that even though the powers of this Court under Article 136 of the Constitution are very wide, but in criminal appeals, this Court would not interfere with the concurrent findings of fact save in very exceptional cases. In an appeal under Article 136 of the Constitution, this Court does not normally appreciate the evidence by itself and go into the question of credibility of witness. Elaborating further, the Court has opined that the assessment of the evidence by the High Court is accepted as final except where the conclusions recorded by the High Court are manifestly perverse and unsupportable by the evidence on record."

Fully conscious of the aforesaid parameters, we have examined the arguments raised in these appeals.

14. Coming to the first submission that was made by the learned counsel for the appellants, we may point out that though PW-1 has stated to the effect that he came to know about the names of the accused persons A-4 and A-5 around 10.45 a.m. and he had informed the IO about the same at the time of inquest, the IO (PW-22) has stated to the contrary. In his deposition, the IO has mentioned that these names were never given to him by PW-1 or even PW-2. We find that this plea was specifically raised by the appellants before the High Court and the High Court has even recorded the same while taking note of the submissions of the appellants. However, nowhere this argument is discussed or dealt with.

15. Therefore, in these circumstances, it would always be open for this Court to consider the weight of the aforesaid submission.

16. It cannot be disputed and not even disputed by the learned counsel for the respondents, that the testimonies of PW-1 and PW-2 on the one hand and that of PW-22 on the other hand contradicted each other on this aspect. The question is as to whether this contradiction is explained or taken care of by the prosecution? We do not find it to be so. If PW-1 is correct in his deposition and the names of A-4 and A-5 were told to the IO (PW-22) at the time of inquest, we fail to understand why these names were not mentioned in the inquest report. Further, if such names were disclosed, the IO would have immediately carried further investigation and taken action on the basis of the aforesaid information provided to him by PW-1. But, it did not happen. Admittedly for next 6-7 days when PW-22 was in-charge of the investigation, he neither questioned A-4 and A-5 nor arrested them. In fact, for this period they were not in picture at all. Therefore, one may intend to believe the testimony of PW-22, viz., the names were not disclosed to him by PW-1 or PW-2 and to this extent, these two witnesses have not told the truth.

17. Proceeding on this basis and that too, relying upon the deposition of PW-22 in this behalf, the next question that arises is as to at what point of time or at what stage, the accusing finger was raised at A-4 and A-5 and how it was revealed that the driver and the person who was 30 years old as stated by PW-1 in his complaint were none else than A-4 and A-5. No explanation worth the name is coming forward. An attempt was made on behalf of the learned counsel for the respondents to argue that PW-3 who is also an eye witness had named A-4 and A-5 and thereupon, A-4 was arrested and A-5 surrendered.

18. However, on this aspect, we find that the testimony of PW-3 is also shrouded by suspicion. He is stated to be an auto-driver who, according to him, when was crossing the road, saw the occurrence. At the same time, he stated that he left the place and went to Theni. It could not be pointed out as to at whose instance it became known that PW-3 was also an eye-witness. Admittedly, PW-1 and PW-2 did not name him as an eye-witness, at least in their initial statements. His statement is recorded by the second IO (PW-23) after seven days of occurrence. For this purpose, we had minutely gone through the statement of PW-3 and arrived at an irresistible conclusion that this witness was introduced at a later stage for the purpose of roping in A-4 and A-5.

19. At some place, PW-3 has stated that at the time of occurrence, he was driving the auto and at other place, it is stated that he was standing at a corner when he saw the incidence. It has also come on record that he was known to the family of the victim. In fact, for the last number of years he had been taking PW-12 (widow of the deceased) to the hospital. Therefore, this possibility cannot be ruled out that at the instance of the family members of the deceased, he agreed to give the statement. Otherwise, his conduct, if he had, in fact, seen the occurrence, appears to be little abnormal which shakes the very credibility of his

statement. He was known to the family of the victim and if he had seen the occurrence, he would not have gone away but would have stood by their side along with PW-1 and PW-2. However, he has stated that as he was afraid after the threats were given by the culprits to PW-1 and PW-2 and on seeing the blood at the place of occurrence, he had gone away from that place. If this reason is to be believed, he has not explained thereafter as to how he could muster the courage and give his statement to the police.

20. All these circumstances create a reasonable doubt insofar as the presence and participation of A-4 and A-5 is concerned. We, thus, are inclined to allow these appeals giving benefit of doubt to A-4 and A-5.

21. Accordingly, the appeals are allowed and the conviction recorded in respect of A-4 and A-5 (appellants herein) is, thus, set aside.

22. These two appellants shall, thus, be released forthwith unless they are required in any other case.