Yunis @ Kariya vs State Of Madhya Pradesh on 10 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 539, 2003 (1) SCC 425, 2002 AIR SCW 5169, 2003 ALL MR(CRI) 359, 2003 SCC(CRI) 341, 2003 (1) LRI 158, 2003 CALCRILR 329, 2002 (7) SLT 303, 2003 (2) SRJ 73, 2003 CRILR(SC&MP) 135, 2002 (9) SCALE 245, (2003) 2 CRIMES 281, (2003) 2 MPHT 194, (2003) 2 SUPREME 899, (2003) 2 PAT LJR 87, (2003) 1 RECCRIR 378, (2003) 1 CURCRIR 13, (2002) 9 SCALE 245, (2003) 1 INDLD 155, (2003) 1 BLJ 485, (2003) 1 CHANDCRIC 27

Author: Arun Kumar

Bench: S. Rajendra Babu, Arun Kumar

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           CASE NO.:
Appeal (crl.)  522 of 1995

PETITIONER:
Yunis @ Kariya

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 10/12/2002

BENCH:
S. RAJENDRA BABU & ARUN KUMAR.

JUDGMENT:
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JUDGMENT With Crl. A.No.523/1995, 524/1995 and 525/1995 ARUN KUMAR, J.

Eight accused persons were charged for offences under Sections 302, 147, 148 and 149 of the Indian Penal Code. Out of the 8 accused persons, 2 had been released on temporary bail on different occasions during trial. They did not surrender and could not be arrested. Therefore, their trial had to be separated. They are Rafique s/o Chand Khan and Aslam alias Mangole s/o Salim. The remaining 6 accused viz. Yunis alias Karri alias Kariya, Ballu alias Abdul Nayeem, Abdul Rauf, Daggi alias Rafique, Liyaquatullah and Mohammad Javid were tried and convicted for offences under Sections 302/149 IPC. Abdul Nayeem one of the accused was also convicted and sentenced to one year rigorous imprisonment under Section 147 IPC while each one of the remaining five was additionally convicted and sentenced to two years' rigorous imprisonment. These convictions were as per the judgment of the Sessions Judge, Jabalpur in Sessions Trial No.274/1985 decided on 3rd December, 1987. The six convicted accused filed appeals against the judgment of the Sessions Court in the High

Court of Madhya Pradesh. The High Court was pleased to dismiss all the appeals. These 4 appeals arising from the common judgment of the High Court have been filed by the 4 convicts.

Briefly, the facts are that on 23.6.1985 at about 6.15 p.m., the complainant Abdul Jabbar s/o Sheikh Munir was going to purchase medicine from Kumar Medical Store, Miloniganj, Jabalpur. As soon as he reached near the shop he heard noise and saw that his nephew Zuber was surrounded by Rafique, Daggi, Yunus alias Karri, Javed, Mangole, Liyaquat, Rauf Kunjda and Ballu alias Nayeem. These accused persons were armed with Gupti, Chhuris (knives), Sword, Baka etc.etc. One of them Rauf Kunjda had a bomb. The other accused Rafique who had a Gupti in his hands gave two blows with the Gupti on the chest of Zuber while Liyaquat inflicted a knife blow on the left side of the waist. One of them inflicted a sword blow which Zuber tried to stop with his hand which resulted in the injury on his little finger of the right hand, a portion whereof was chopped off. Zuber shouted and started running but he was stopped by Ballu (Nayeem) and Rauf Kunjda when Daggi inflicted a knife blow on the left side of the back of the buttock. On hearing the noise Saleem Quadir, Sharif and other persons collected. On seeing them, the accused persons left Zuber and ran away. Zuber was bleeding profusely and he was taken in a Rickshaw to the Victoria Hospital where he died soon thereafter. According to the prosecution case, Zuber died on account of injury received by him at the hands of the accused persons. FIR (Ex.P.10) was lodged by Abdul Jabbar. Inquest (P.13) was held, thereafter the autopsy was conducted on the body of Zuber by Dr. D.K. Sakalley (P.W.14). Zuber was aged about 18 years. Dr. Sakalley gave details of injuries suffered by the deceased which are as under:

> "(i) Stab wound, 2 c.m. long, oblique with clean cut margins and pointed ends situated on right side of chest, 6 c.m. above right nipple. The width was c.m., would was elliptical in shape. The wound was going slightly upwards anad laterally, in the muscles of chest up 7 c.m. depth, but not penetrating the thoracic cage. The wound was gradually diminishing in dimentions and track was filled with clotted sticky blood. The wound was slightly in-wards also;
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> (ii) Stab wound, transverse, situated on left side of chest, 15 cm. Below medical end of clavicle, 2 cm left to mid-line on pericardial area, elliptical, 2 cm. X cm., lower marging shows slight beveling underneath 5th rib costal cartilage is cut; the direction of wound is inwards slightly upwards and medially. On further exploration, there is slit like cut in pericardium, clots of blood present. In pericardial cavity also, about 10 c.c. of blood with clots were present. There was a transverse cut in the track on anterior wall of right ventricle of heart near upper margine in whole thickness, which is 0.3 cm. It is not penetrating the post side. This injury to heart is 0.8 cm. Broad with clean-cut margins and pointed ends. Upto this level, depth is 9 cm.
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> (iii) Incised wound on lateral side of base of right little finger extending to postero lateral aspect also oblique, 2 cm. X cm. X cm."

According to Dr. Sakalley these injuries were anti-mortem and could be caused by sharp edged weapons. The cause of death was injury to the heart. During investigation the weapons of offence were seized including a country-made bomb recovered from Abdul Rauf. The seized articles were got

examined through the Chemical Examiner and the Serologist, Calcutta.

The main thrust of argument advanced on behalf of the appellants by the learned counsel appearing for them was that the injuries mentioned by the eye-witnesses did not tally with the injuries mentioned by the Autopsy Surgeon. While the eye-witnesses referred to five injuries on the body of the deceased, the autopsy surgeon had mentioned only three. From this, the learned counsel sought to urge that the eye-witnesses were giving false evidence which showed that they were really not eye-witnesses and they had not witnessed the crime. An attempt was also made to suggest that the place of occurrence had been changed by the prosecution. Another argument sought to be raised was that the prosecution has failed to prove the motive of the crime. We do not find any merit whatsoever in any of the contentions raised on behalf of the appellants. In our view, the evidence i.e. oral testimony of the eye-witnesses as well as medical and other evidence on record clearly establishes the commission of crime, the manner in which it was committed and the place where it was committed. A glaring fact in the present case is that the crime took place in broad day light (in the summer month of June sunlight is still there at 6.15 p.m. - which is given as the time of occurrence of crime). The crime was witnessed by so many persons since it was in a market area, three of them have appeared as eye-witnesses. One of the eye-witnesses is the uncle of the deceased whose presence on the spot appears to be natural. Spot maps prepared during investigation have been proved on record to show the place of occurrence. Abdul Jabbar one of the eye-witnesses had also described the place of crime which tallies with the rest of the evidences on record. The appellants have tried to create confusion about the place of occurrence by picking up portions from the evidence of eye-witnesses. One of the witness said that place of occurrence may be near Oil Mill shop. As a matter of fact the Oil Mill Shop, Kumar Medical Store and watch repairing shop mentioned by another eye-witness as landmarks where the incident took place happen to be in the same market and in the vicinity of each other. Therefore, different references to landmarks made by different eye- witnesses do not really change the place of occurrence. There is no scope for confusion, the moment reference is made to the spot maps proved on record.

A doubt was thrown about the veracity of evidence of the eye- witnesses on the ground that the entire incident took place within half a minute and the witnesses could not have seen what was happening in such a short time. This argument, in our view, is wholly misconceived. Eight persons, each armed with weapons, attacked a single individual in broad day light in a market place. Even if the incident took place in a very short span of time, it does not mean that the eye-witnesses could not have observed the same. The evidence of the eye-witnesses tallies with each other and we have no reason to doubt the same.

Coming to the alleged discrepancy between medical evidence and evidence of the eye-witnesses, it is to be noted that at least three injuries referred to by the autopsy Surgeon and forming part of the medical evidence and as stated by the eye-witnesses are common. These three injuries are by themselves sufficient to cause death. Autopsy surgeon has not mentioned the knife injury on the back side of the buttock and another injury. The mere non-mention of the two injuries by the autopsy Surgeon does not and cannot lead to rejection of the prosecution case. The two injuries might have escaped the notice of the doctor. Both the courts below have found the prosecution case to be fully established and proved beyond any doubt whatsoever and we see no reason to take a

different view.

The prosecution in the present case has failed to prove motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is settled law that establishment of motive is not a sine qua non for proving the prosecution case. For all these reasons, we find no merits in these appeals. It was also argued that inquest report is not substantive evidence and therefore, on its basis alone the prosecution could not succeed. For this reliance was placed in the case of Munish Prasad and others vs. State of Bihar [2002 (1) SCC 351]. This case is of no relevance to the present case. Here the prosecution has the whole lot of other convincing evidence which has led to the conviction of the accused persons. It is not the inquest report alone which forms basis for conviction The learned counsel appearing for appellant - Liyaquat argued that no overt act is imputed to his client and he was being implicated only on the basis of Section 149 IPC. This argument, in our view, has no merit. Even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of unlawful assembly is sufficient for conviction. The fact that Liyaquat was a member of the unlawful assembly is sufficient to hold him guilty. The presence of Liyaquat has not been disputed.

All the appeals are accordingly dismissed.