

S. Ramesh Vs. The State through The Deputy Superintendent of Police, Thiruvarur District

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Court : Chennai Madurai

Decided On : Oct-12-2015

Judge : S. Nagamuthu & V.S. Ravi

Appeal No. : CrI.A[MD].No. 521 of 2008

Appellant : S. Ramesh

Respondent : The State through The Deputy Superintendent of Police, Thiruvarur District

Judgement :

(Prayer: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction, dated 24.10.2008, made in S.C.No.53 of 2008, on the file of the First Additional District and Sessions Judge, [PCR Cases], Thanjavur.)

S. Nagamuthu, J.

The appellant is the sole accused in S.C.No.53 of 2008, on the file of the learned First Additional District and Sessions Judge, [PCR Cases], Thanjavur. He stood charged for the offence punishable under Section 302 of the Indian Penal Code and Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989. By Judgment dated 24.10.2008, the Trial Court has acquitted the appellant from the charge under Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but convicted him under Section 302 of the Indian Penal Code. For the offence under Section 302 of the Indian Penal Code, the Trial Court has sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three years. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2.The respondent originally filed final report against two accused, viz., the appellant herein and one Mr.T.Sengodan, S/o.Thangarasu. The appellant herein was arrayed as the first accused and Mr.T.Sengodan was arrayed as the second accused. On committal of the said case to the Trial Court, the trial against both the accused was conducted jointly in S.C.No.53 of 2008. But, before the commencement of the examination of the witnesses, the second accused - Mr.T.Sengodan absconded. Therefore, the case against him was split up separately and tried in S.C.No.63 of 2008. In the present case in S.C.No.53 of 2008, the trial went on against the appellant alone, in which 20 witnesses were examined, 17 documents and 10 material objects were marked.

3. When the trial of this case was in progress, the second accused - Mr.T.Sengodan was secured. Therefore, the case against him in S.C.No.63 of 2008 was also tried by the same Judge simultaneously. The records revealed that in the said case in S.C.No.63 of 2008, 15 witnesses were examined, 13 documents and 9 material objects were marked. Some witnesses examined in the present case in S.C.No.53 of 2008 were omitted to be examined in S.C.No.63 of 2008. Similarly, some documents and some material objects were also omitted to be marked. There were many common witnesses, more particularly, the eye-witnesses. Finally, by Judgment dated 24.10.2008, the Trial Court has convicted the appellant, viz., the accused in S.C.No.53 of 2008 under Section 302 of the Indian Penal Code. That is how, the appellant is now before this Court with this Criminal Appeal. So far as S.C.No.63 of 2008 is concerned, the Trial Court delivered Judgment on the same day and acquitted Mr.T.Sengodan, who was originally arrayed as the second accused in S.C.No.53 of 2008. The State has not

preferred any appeal against the Judgment, dated 24.10.2008, made in S.C.No.63 of 2008 and thus, the acquittal of the accused - Mr.T.Sengodan has become final. Thus, what is now before this Division Bench is only the appeal filled against the conviction of the appellant, who faced the trial in S.C.No.53 of 2008.

4.1. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, was one Mr.Vinoth @ Vinothanagar. He belonged to Scheduled Caste. He was a Taxi Driver by profession. He was using the Taxi Stand at Koothanallur to park his Taxi and to ply the same from the said Taxi Stand.

4.2. It is alleged that three days prior to 28.07.2007, the appellant herein, who also belongs to the same village, came to the Taxi Stand, abused the deceased and directed him not to use the said Taxi Stand. The deceased, in turn, told him that he would continue to use the said Taxi Stand. At that time, it is alleged that the appellant warned him that he was dashing against the local rowdy and so, he would do away with him in two days. Thereafter, the appellant left the place of occurrence. This is stated to be the motive for the occurrence.

4.3. On 28.07.2007, at about 03.30 PM, the deceased had gone to the above said Taxi Stand. At that time, the accused Nos.1 and 2 came to the said place in a motorcycle, bearing Registration No.TMF-3092. The second accused - Mr.T.Sengodan travelled as a pillion rider in the motorcycle. They parked the motorcycle in the Taxi Stand and came near the deceased shouting at him. The appellant shouted at the deceased that he would kill him at once. So shouting, he took out a knife and attempted to stab the deceased. The deceased, out of fear, started running away from the place of occurrence. The second accused gave a chase, caught him hold and facilitated the first accused to stab the deceased. The first accused, then, ran towards the deceased and stabbed him with a knife, twice. The deceased fell down with injuries. Then, both the accused fled away from the scene of occurrence. The occurrence was witnessed by PW-1 to PW-4. PW-1 to PW-3 are the father, brother and father-in-law respectively of the deceased. PW-4 is a native of the said village.

4.4. Hoping that there was still life, PW-4, immediately, took him to the Government Hospital at Mannarkudi. At 04.20 PM, on 28.07.2007, PW-14 - Dr.Geetha examined him and found that he was already dead. EX-P7 is the Accident Register. Then, she kept the dead body in the mortuary and gave intimation to the police about the same.

4.5. PW-18 was the then Sub-Inspector of Police, attached to the Koothanallur Police Station. At 03.30 PM, on 28.07.2007, Mr.Kannan [PW-10] informed her over phone that there was an untoward incident near the Taxi Stand at Koothanallur. She immediately rushed from the Police Station to the place of occurrence. On reaching the place of occurrence, she came to know that the deceased was taken to the Government Hospital at Mannarkudi. Therefore, she immediately, rushed to the Government Hospital at Mannarkudi. By the time when she reached the hospital, the deceased was already declared dead by the doctor. PW-1 was very much available in the hospital. She recorded the statement of PW-1, under EX-P1, returned to the Police Station and at 05.45 PM, she registered a case in Crime No.226 of 2007, under Section 302 of the Indian Penal Code r/w Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. EX-P1 is the complaint and EX-P11 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the case diary to the Deputy Superintendent of Police for investigation.

4.6. PW-19, the then Deputy Superintendent of Police, Thiruvarur, took up the case for investigation, on 28.07.2007 and proceeded to the place of occurrence. At 07.00 PM, on 28.07.2007, he prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-8 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he went to the Government Hospital at Mannarkudi, where he conducted inquest on the body of the deceased. EX-P13 is the inquest report. Then, he forwarded the dead body for postmortem.

4.7. PW-15 - Dr.R.Seenivasaraghavan conducted autopsy on the body of the deceased, at 09.25 AM, on 29.07.2007. He noticed the following injuries:-

"1. There is a vertically placed stab injury 5 cm lateral to left sternal border in the 2nd ICS measuring 4 cm length X 1/2 cm, breadth and 15 cm. depth which is obliquely placed facing downwards injuring left upper lobe of the lung and arch of aorta in line with wound. Edges inverted. Entry of wound is triangular shaped not elliptical. ecchymosis present around the wound.

2. Lacerated injury of size 3 X 2X 2 cm over left temporal parietal region.

Opening of Thorax: No fracture ribs pericardium is distended with blood of about 100 ml. Heart chambers are empty. Laceration of arch of aorta present in line with stab wound. Laceration of left upper lobe of lung is in line with stab wound. Blood collection of 200 ml of left Thoracic cavity.

Stomach: Contains about 100 ml of digested food particles.

Liver, spleen kidneys and intestine are pale.

Skull no fracture/Membranes intact".

EX-P8 is the postmortem certificate. He gave opinion that the deceased would appear to have died of injury to left lung and arch of aorta by sharp weapon leading to hypovolumic shock.

4.8. During the course of investigation, PW-19 obtained the community certificate for both the accused as well as the deceased. In the meanwhile, the accused had surrendered before the learned Judicial Magistrate at Murisi. On obtaining orders from the jurisdictional magistrate, he took police custody of both the accused on 03.08.2007, at 05.36 PM. While in custody, the first accused gave a voluntary confession, in which he disclosed the place, where he had hidden a knife and the motorcycle. In pursuance of the same, he took the police and the witnesses to his cattle shed and produced the knife, [MO-1] and the motorcycle [MO-10]. The second accused also gave a voluntary confession, out of which, no discovery of any fact was made. On returning to the Police Station, PW-19 forwarded both the accused to the Court for judicial remand and handed over the material objects with a request to the Court to forward the same for chemical examination. The report revealed that there were bloodstains of 'O' group on all the material objects. On

completing the investigation, he laid charge sheet against the accused.

4.9. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution [in S.C.No.53 of 2008], 20 witnesses were examined, 17 documents and 10 material objects were marked. Out of the said 20 witnesses, PW-1 is the father of the deceased. He has stated about the earlier quarrel between the first accused and the deceased. He has further stated that on the date of occurrence, from his house at Vakkadu Village, he went to Koothanallur Taxi Stand. In the Taxi Stand, at 03.30 PM, according to him, he witnessed the occurrence. PW-2 is the nephew of PW-1. He is also a native of Vakkottai village. He has stated that he accompanied PW-1 to Koothanallur Taxi Stand, where he witnessed the occurrence.

4.10. PW-3 is a resident of Kanur Village. He is the father-in-law of PW-2. He has stated that on 28.07.2007, he had gone to the house of PW-1 at Vakkottai village, from where he accompanied PW-1 and PW-2 to Koothanallur Taxi Stand and at the Taxi Stand, at Koothanallur, he witnessed the occurrence. PW-4 is also a resident of Vakkottai village. He has stated that at 03.30 PM, on 28.07.2007, he was standing at the Taxi Stand at Koothanallur and at that time, he witnessed the entire occurrence. PW-5 to PW-7 have turned hostile and they have not supported the case of the prosecution in any manner. PW-8 has spoken about the preparation of the observation mahazer, the rough sketch and also the recovery of bloodstained earth and sample earth from the place of occurrence. PW-9 has stated that while in police custody, the first accused gave a voluntary confession, out of which, recovery of material objects was made. PW-10 has spoken about the earlier occurrence, in which there was quarrel between the first accused and the deceased. PW-11 has not stated anything incriminating against the accused. PW-12 and PW-13 have stated that they took photographs at the place of occurrence, as instructed by the Inspector of Police. The photographs have been marked as MO-6 series.

4.11. PW-14 has stated that at 04.20 PM, the deceased was brought to the Government Hospital, Mannarkudi. On examination, she declared him dead. EX-P7 is the Accident Register. PW-15 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-16 has stated that he had issued community certificate stating that the deceased belonged to Scheduled Caste Community. PW-17, the then Deputy Tahsildar, Needamangalam, has stated that he issued a community certificate stating that the first accused belongs to backward class. PW-18 has spoken about the registration of the case on the complaint of PW-1. PW-19 has spoken about the investigation done by him and the filing of the final report. PW-20 has spoken about the ownership of the vehicle bearing Registration No.TAS-3429.

4.12. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that in S.C.No.63 of 2008, the Trial Court delivered Judgment on the same day as soon as the Judgment was delivered in the present case. In S.C.No.63 of 2008, Mr.T.Sengodan was acquitted, disbelieving the evidences of PW-1 to PW-4, who have stated that the second accused gave a chase, then caught him hold and facilitated the first accused to stab him. The learned counsel would further submit that this Court can take judicial notice of the Judgment in S.C.No.63 of 2008. He would further submit that PW-1 to PW-4 are the family members of the deceased and they were the residents of different villages. Their presence at the place of occurrence is highly doubtful. He would further submit that there is inordinate delay in preferring the

complaint and the same has not been explained away by the prosecution. The learned counsel would further submit that if once the participation of Mr.T.Sengodan - the second accused is found to be false, then, as a corollary, the allegation that on being facilitated, the first accused stabbed the deceased cannot be believed. Thus, according to the learned counsel, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the evidences of PW-1 to PW-4 are very cogent and they are convincing. Their evidences are fully corroborated by the medical evidence. He would further submit that the motive has also been established by the prosecution. He would further submit that the recovery of the material objects at the instance of the accused on their disclosure statements also would further strengthen the case of the prosecution. Simply because Mr.T.Sengodan has been acquitted, that cannot be a ground to acquit the appellant also. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed on the appellant by the Trial Court does not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. Admittedly, according to the case of the prosecution, the deceased was at the Taxi Stand at Koothanallur. At that time, this appellant and Mr.T.Sengodan came in a motorcycle to the place of occurrence. As soon as getting down from the motorcycle, the first accused shouted at the deceased that he was going to kill him. On hearing the same, the deceased attempted to escape. But, Mr.T.Sengodan, immediately, gave a chase, caught him hold and thereafter, the appellant rushed towards him and stabbed the deceased. Now, the Trial Court has disbelieved a part of the case of the prosecution that Mr.T.Sengodan participated in the occurrence, gave a chase, caught him hold and facilitated the first accused to cause the injuries on the deceased. Thus, a part of the story of the prosecution has been disbelieved by the Trial Court itself.

8. When once it is so held that Mr.T.Sengodan participated in the occurrence, then, the occurrence would not have happened in the manner as projected by the prosecution at all. It is not as though the deceased was standing and immediately the first accused stabbed him. According to the case of the prosecution, the first accused shouted at him and on hearing the same, the deceased had tried to escape, because the first accused was going to attack him. When he started running, it was the second accused, who gave a chase and then caught him hold. But, for the participation of the second accused, the deceased would have run away and the first accused would not have been able to cause any injury on the deceased. Thus, in the absence of the participation of Mr.T.Sengodan, the appellant would not have caused the above injury, as it is projected by the prosecution. Since the participation of Mr.T.Sengodan in the occurrence has been totally disbelieved by the Trial Court, as a corollary, the Trial Court ought to have disbelieved the participation of this appellant also.

9. There is yet another reason to reject the case of the prosecution as against the appellant herein. PW-1 - the father and PW-2 - the brother of the deceased are the residents of Vakkottai Village. PW-3 is the father-in-law of the deceased. According to him, he had gone to Vakkottai Village to the house of PW-1 on the day of occurrence. It is the case of the prosecution that all the three witnesses went to Koothanallur Village and they were in the Taxi Stand. Being chance witnesses, it is for them to explain to the satisfaction of the Court as to what made them to be present at the place of occurrence and as to for what purpose, they went to the place of occurrence. They have simply stated that they together went to the Taxi Stand at Koothanallur. Thus, absolutely, there is no satisfactory explanation in respect of their alleged presence at the time of occurrence. Thus, in our considered view, their very presence at the place of occurrence itself is doubtful.

10. So far as PW-4 is concerned, he is a resident of Vakkottai Village. He has simply stated that he was standing at the Taxi Stand. He has also not given any explanation as to why he was present at the place of occurrence at the crucial time. Thus, his presence is also doubtful. These four witnesses are interested witnesses, besides being chance witnesses. Since their very presence itself is

doubtful and since their evidences have been rejected by the Trial Court, insofar as it relates to Mr.T.Sengodan is concerned, it is too difficult to sustain the conviction and sentence imposed on the appellant herein by the Trial Court, based on their evidences. The discovery of the material objects at the instance of the accused would not, in any manner, improve the case of the prosecution. At any rate, we are impelled to hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

11. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant by Judgment dated 24.10.2008, made in S.C.No.53 of 2008, on the file of the First Additional District and Sessions Judge, [PCR Cases], Thanjavur, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated.

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