

Parthiban and Others Vs. State, Represented by, Inspector of Police, Ariyalur District

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Court : Chennai

Decided On : Aug-23-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal Nos. 349, 353, 392, 419, 439, 449 & 495 of 2016

Appellant : Parthiban and Others

Respondent : State, Represented by, Inspector of Police, Ariyalur District

Judgement :

(Prayer: Criminal Appeals filed under Section 374 of the Criminal Procedure Code, against the judgement of the learned District and Principal Sessions Judge, Ariyalur, in S.C.No.83 of 2014, dated 20.04.2016.)

Common Judgment

S. Nagamuthu, J.

1. The appellants are the accused 1 to 14 in Sessions Case No.83 of 2014 on the file of the learned Principal District and Sessions Judge, Ariyalur. The trial Court framed charges under Sections 147, 148, 449 and 302 IPC against all the 14 accused. By judgement, dated 20.04.2016, the trial Court convicted all the 14

accused and sentenced them as detailed below:-

Sl.No.	Rank of the Accused	Charges	Sentence
1	A-1 to A-14	147 IPC	Rigorous Imprisonment for one year and fine of Rs.1,000/-each in default to undergo simple imprisonment for one month
2	A-1 to A-14	148 IPC	Rigorous Imprisonment for one year and fine of Rs.1,000/-each, in default to undergo simple imprisonment for one month
3	A-1 to A-3	449 IPC	Imprisonment for life and to pay fine of Rs.2,000/- each in default to undergo simple imprisonment for three months

4	A-4 to A-14	449 r/w 149 IPC	Imprisonment for life and fine of Rs.2,000/- each in default to under simple imprisonment for three months.
5	A-1 and A-2	302 IPC	Imprisonment for Life and to pay a fine of Rs.2,000/- each in default to under simple imprisonment for 3 months.
6	A-3 and A-4	302 r/w 149 IPC	Imprisonment for Life and fine of Rs.2,000/- each in default to undergo simple imprisonment for 3 months.

2. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

The deceased, in this case, was one Mr.Chinnajayanth. P.W1 is his mother. P.W.1 has got three sons. The third son is one Mr.Vinayaka Ananth. One Gowthami was married to Vinayaka Ananth. Vinayaka Ananth had gone abroad, on account of his job. Mrs.Gowthami, was, therefore, staying at the house of her father, which is situated few houses away from the house of P.W.1. P.W.1 was residing at Utkottai Village.

4. Mrs.Gowthami wanted to apply for the post of Police Constable. Some time before the occurrence, on the request made by Mrs.Gowthami, the first accused, a resident of the same village, had gone to the house of the father of Mrs.Gowmathi, met Mrs.Gowthami and helped her in making the application for the said post. This was noticed by the deceased. He objected to the same. Since Mrs.Gowmathi's husband had gone abroad, it would not look proper, if the first accused visited the house of Mrs.Gowthami. The first accused went away. Again, on the day of occurrence, i.e., on 20.04.2012, the deceased found the first accused standing just in front of the house of Mrs.Gowthami. He went to the house of Mrs.Gowthami, questioned the first accused as to why he had come to the house of Mrs.Gowthami, despite his earlier warning. Then, the deceased attacked the first accused on his face with his hands. The first accused sustained injuries. He came to the house of P.W.1 and informed her about the said occurrence. P.W.1 persuaded her and offered to give Rs.500/- for the first accused to take treatment. But the first accused refused to receive the money and he told that he would take treatment in the hospital, where his sister was working. This happened at around 12.00 noon. The first accused went away.

5. It is further alleged that around 03.00 pm, all the 14 accused came to the house of P.W.1. They were all in aggressive mood to attack the deceased. The deceased was inside the house. P.W.1 tried to dissuade them. But the accused 1 and 2 trespassed into the house of P.W.1 in search of the deceased. Opening the back-door of the house, the deceased ran out of the house. All these 14 accused gave a chase. The accused reached the neighbouring village, known as, Thottikulam. Out of fear, he entered into the house of P.W.2, who was a resident of Thottikulam Village. The accused 1 to 3 entered into the house, reached the deceased, attacked him with wooden logs and brought him outside the house, i.e., in front of the house of P.W.2.

6. It is further alleged that all the 14 accused indiscriminately attacked the deceased with wooden logs. Then, they took him to a nearby electric light post, where the second accused, dashed the head of the deceased against the light post. Again, all the 14 accused dragged the deceased to a distance and in front of a local school, on the road, all the 14 accused attacked the deceased,

indiscriminately with weapons (wooden logs). On hearing the alarm raised, the neighbouring people rushed to the place of occurrence. The occurrence was witnessed by P.W.1-the mother, P.W.2 and P.W.13. All the fourteen accused ran away from the scene of occurrence. They brought the deceased to the house of P.W.1. There were blood injuries on his body. P.W.1 and others, immediately, took him to the Government Hospital, Jeyankondam. At 06.40 pm, on 20.04.2012, P.W.9, Dr.Sivaprakasam Usha, examined the deceased. The deceased was conscious. He told her that, at Thottikulam Village, around 04.00 pm, on 20.04.2012, he was attacked by ten known persons with wooden logs. The Doctor, P.W.9, found the following injuries:-

- 1) A lacerated injury measuring 6x1x1 cms in the left side of the head.
- 2) A lacerated injury measuring 6x2x1 cm in the left backside of the head.
- 3) A lacerated injury measuring 5x1x1 cm in the right backside of the head.
- 4) A lacerated injury measuring 5x x cm in the jaw.
- 5) A lacerated injury measuring 3x x cm in the right side of the jaw.
- 6) A contusion measuring 3x3 cms in the left cheek.
- 7) The teeth was found shaky.

7. Ex.P-6 is the accident register. She admitted him as an inpatient.

8. On receiving intimation from the hospital, P.W.17, the then Special Sub-Inspector of Police of Jeyankondam Police Station, rushed to the hospital, recorded the statement of P.W.1 and on returning to the Police Station at 08.00 pm on 20.04.2012, registered a case in Crime No.268 of 2012, for the offence punishable under Sections 147, 148, 294 (b), 324 and 302 IPC. Ex.P-1 is the complaint made by P.W.1 and Ex.P-14 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 09.00 am on 21.04.2012. In the complaint, P.W.1 told that the deceased was attacked by these 14 accused and several others, who also belonged to Utkottai Village.

9. P.W.18 took up the case for investigation. He visited the place of occurrence at 05.30 am on 21.04.2012 and prepared an observation mahazar and a rough sketch (vide Ex.P-13 observation and Ex.P-15 rough sketch) in the presence of P.W.7. The observation mahazar and the rough sketch were prepared near the house of P.W.2. P.W.18 recovered the blood stained earth, sample earth and wooden logs from a road, opposite to Thottikulam Elementary School. He also recovered blood stained earth, sample earth and another wooden log, lying in front of the house of P.W.2, under Ex.P-4 mahazar.

10. The deceased died in the hospital, within a short while, after he was admitted as an inpatient. As a matter of fact, a complaint was made only, after the death of the deceased. P.W.8 conducted inquest on the body of the deceased at the hospital at 07.00 am and forwarded the same for post-mortem. P.W.11, Dr.Ravishankar, conducted autopsy on the body of the deceased on 21.04.2012 at 11.55 am. He found the following injuries:-

1. A lacerated injury measuring 6x1x1 cms in the left side centre of the head.
2. A lacerated injury measuring 6x2x1 cm in the right backside of the head.
3. A lacerated injury measuring 5x1x1 cm in the left backside of the head.
4. A lacerated injury measuring 5x1x1 cm in the left jaw.
5. A lacerated injury measuring 4x1x1 cm in the right jaw.
6. An abrasion measuring 2x1x0.5 cm in the left shoulder.
7. An abrasion measuring 1x0.5x0.5 cm in the left wrist.
8. Blood was oozing out from the private part.
9. Two teeth in the front row were found loose.

Internal injuries:-

Neck No ligature mark seen. Hyoid Bone Preserved for chemical examination.
Thorax No fracture of ribs on both sides. Eyes congested on both sides. Heart all

chambers empty. Abdomen, stomach no specific odour. Liver, spleen and kidneys all are congested. Bladder empty. Skull with 4 cm x 1 cm lacerated fracture on left parietal region. Skull 4x2 cm liver fracture of left occipital region. 4X2 cm lacerated fracture on right occipital region of skull. Brain clotted blood in left parietal and right occipital, ranging brain.

11. Ex.P-9 is the post-mortem certificate and Ex.P-10 is his final opinion regarding the cause of death of the deceased. He opined that the death of the deceased was due to shock and haemorrhage caused on account of multiple injuries, more particularly, the injury caused to the blood vessels supplying blood to the brain. P.W.18 arrested the accused 1, 3 and 5, on 22.04.2012 at 04.00 pm, in Gangaikonda Sholapuram Bus stop, in the presence of the witnesses. On such arrest, the first accused gave a voluntary confession, in which he had disclosed the place where he had hidden the wooden logs. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced four wooden logs. P.W.18 recovered the same under a mahazar. Then, on returning to the Police Station, P.W.18 forwarded the accused to the Court for judicial remand. The other accused surrendered before the learned Judicial Magistrate at Ariyalur. On completing the investigation, he laid charge sheet against all the fourteen accused.

12. Based on the above materials, the trial court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case of the prosecution, as many as 18 witnesses were examined, 17 documents were exhibited and three material objects have been marked.

13. Out of the said witnesses, P.W.1 the mother of the deceased has spoken about the motive. She has stated that around 03.00 pm, when the deceased was in her house all the 14 accused came in aggressive mood, armed with wooden logs. The accused 1 to 3 trespassed into the house and the deceased escaped from her house. All these 14 accused gave a chase. Then, the deceased went to the neighbouring village, i.e., Thottikulam Village, and entered into the house of P.W.2. She has further stated that the accused 1 to 3 entered into the house of

P.W.2, attacked the deceased inside the house and dragged him outside. She has further stated that the second accused dragged the deceased to a nearby electric light post, and dashed the head of the deceased against the light post. Then, all of them (14 accused) carried him and dragged him in front of a school and attacked him again. She has further stated that thereafter the deceased was brought to the house and then taken to the hospital, where he died. She has further spoken about the complaint made by her.

14. P.W.2 has stated that when he was in his house with his wife and daughter, the accused 1 to 3 trespassed into his house, attacked the deceased, dragged him out and attacked him and dropped him to a nearby school and after dropping him, they fled away from the scene of occurrence. P.Ws.3 and 4 turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken about the arrest of the accused 1, 3 and 5. He has further spoken about the recoveries of the wooden logs (M.O.1) on the disclosure statement made by the first accused. P.Ws.6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has stated that he handed over the First Information Report to the learned Magistrate on 21.04.2012 and he has not stated at what time it was handed over to him and at what time he handed over the same to the learned Magistrate. P.W.9 has spoken about the treatment given to the deceased at the Government Hospital, Jeyankondam. P.W.11 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the examination conducted on the hyoid bone of the deceased. He has stated that there was no fracture on the hyoid bone. P.W.12 has spoken about the chemical examination conducted on the visceral organs of the deceased. According to him, neither alcohol nor poison was found in the body of the deceased. P.W.13 is the daughter-in-law of P.W.2. She has stated that around 03.30 pm, on the day of occurrence, when she was at her house, the accused 1 and 2, along with yet another man, trespassed into her house and attacked the deceased. P.W.14 has spoken about the preparation of the observation mahazar, the rough sketch and also the recoveries of blood stained earth and sample earth from the place of occurrence. P.W.15 has stated that, on 20.04.2014, when he was returning to Utkottai Village, via., Thottikulam village, along with his friend Mr.Rajaram, he found the deceased lying with injuries near

the Elementary School at Thottikulam. On seeing the deceased, P.W.15 took him, in his motorcycle, driven by Mr.Rajaram, to the house of P.W.1. P.W.16 is the resident of Utkottai Village. He has stated that, on 20.04.2012, around 03.30 pm, he went to the house of P.W.2, who is his uncle. At that time, according to him, there were a huge crowd of people in front of the house of P.W.2. In that crowd, he found the second accused. Thereafter, the deceased was dragged out the house of P.W.2, where the first and second accused attacked him. P.W.17 has spoken about the registration of the case on the complaint of P.W.1. P.W.18 has spoken about the investigation done and the final report filed.

15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any document, on their side. Their defence was total denial. Having considered all the above, the trial Court convicted all the 14 accused, as stated in first paragraph of this judgement. Challenging the same, the appellants are before this Court with these Criminal Appeals.

16. Before analyzing the arguments advanced by the learned counsel for both sides and the evidences available on record, let us, at the outset, record our displeasure about the manner in which the charges have been framed, in this case, and the manner in which the trial court has convicted these 14 accused for various offences.

17. Time and again, this Court and the Hon'ble Supreme Court have been impressing upon the trial courts, the importance of charges framed, because the accused are liable to answer the charges framed against them and framing of appropriate charges alone would put the accused on notice, the allegations against him, so that, he could face the same effectively. In other words, framing of appropriate charges would be part of fair trial afforded to the accused.

18. Section 211 of the Criminal Procedure Code contemplates the contents of the charges. The provisions that followed in Chapter XVII elaborately deal with the form of charges and more specifically, Section 215 of the Code, deals with effects of errors in charges. But it is not infrequent that this Court comes across cases, which reflect the indifference on the part of the trial courts, in the matter of

bestowing attention to frame appropriate charges. The present case is a classic example of such indifference. As we have pointed out in paragraph No.1 of this judgment, though it is alleged that 14 accused had assembled, all armed with wooden logs, with a common object of killing the deceased, the trial court has not framed appropriate charges.

19. As we have pointed out, as against all the 14 accused, the trial court has framed charges under Section 147 IPC as well as 148 IPC. Since all the 14 accused were armed with dangerous weapons, the trial court ought to have framed charges against all the accused under Section 148 IPC, but, quite, strangely, the trial court has convicted and imposed sentence for offence under Section 148 as well as 147 IPC. This will amount to clear double jeopardy. It is common knowledge that once an accused is convicted for the offence under Section 148 IPC, he cannot be again punished for the offence under Section 147 IPC.

20. Though it is stated that only the accused 1 and 2 attacked the deceased, which resulted in his death, there was no charge framed against any of the accused in the unlawful assembly, invoking Section 149 IPC. Instead, the trial court has framed a charge under Section 302 IPC against all the 14 accused. We are unable to understand as to how the trial court was justified in framing a charge under Section 302 IPC, against all the 14 accused, though it was not clear as to who caused the death of the deceased. The trial court, has however, convicted the accused 1 and 2 under Section 302 IPC and the accused 3 to 14 under Section 302 read with 149 IPC, though there was no charge on the same. In respect of the legality of the same, we do not want to go into, because, no argument was advanced by the learned counsel for the appellants, in this respect. We only say that the trial court should have altered the charge appropriately, as required under Section 216 Cr.P.C., We earnestly hope that, as has been impressed upon by the Hon'ble Supreme Court as well as by this Court and various High Courts, the trial court shall devote time to go through the papers and frame appropriate charges, so that there occurs no failure of justice.

21. Now turning to the facts of the case, as we have already narrated, the alleged occurrence occurred around 03.00 pm on 20.04.2012. The deceased was taken to the hospital at 06.40 pm on 20.04.2012. At that time, the deceased was conscious. He told P.W.9 that he was attacked by ten known persons, around 04.00 pm at Thottikulam Village, with wooden logs. This statement of the deceased would amount to 'dying declaration'. He has not stated that he was attacked by more than 10 persons.

22. The First Information Report, in this case, was allegedly registered at 08.00 pm on 20.04.2012. P.W.8, the Constable, has stated that the First Information Report was handed over to him by the Sub Inspector of Police, (P.W.17), on 20.04.2012. He has not stated that, at what time it was actually given to him. He has further stated that he went to the house of the learned Magistrate at Jeyankondam, but since the learned Magistrate was not available, he waited there and handed over the First Information Report only on 21.04.2012. The endorsement found on Ex.P-14 would go to show that it was received only at 09.00 am on 21.04.2012. We are informed that the distance between the police station and the house of the learned Magistrate is hardly 100 mts., Though P.W.8 claims that the learned Magistrate was not available, the learned Magistrate has not been examined to verify the truth of the said statement made by P.W.8. At any rate, in our considered view, there is an inordinate delay in the First Information Report, being handed over to the learned Magistrate and the same has not been explained to the Court. When there are multiple number of accused, the delay assumes much importance. Apart from that, the deceased had told the Doctor that he was attacked only by ten persons. But, according to the First Information Report, 14 named accused and several unnamed accused attacked the deceased. This creates initial doubt in the case of the prosecution.

23. The learned counsel for the appellants would submit that the occurrence would not have been seen by anyone and the evidences of the so-called eye witnesses are highly unbelievable. To substantiate his contention, the learned counsel made reliance on the evidence of P.W.15. P.W.15 is a resident of Utkottai Village. According to him, on 20.04.2012, when he was returning to Utkottai Village, via., Thottikulam, along with his co-worker, by name, Mr.Rajaram, they found the

deceased lying in front of the Elementary school, Thottikulam, with injuries. According to his further evidence, there was nobody-else found near the scene of occurrence. On seeing the deceased with blood injuries, he took the deceased in the same motor cycle along with Mr.Rajaram and brought him to the house of the deceased. This witness has been cross-examined. During cross-examination, he has stated that the distance between the house of P.W.1 and the place, where the deceased was lying, was around 01.00 Km. If the evidence of P.W.15 is accepted, as it is not assailed by the prosecution, it is crystal clear that the occurrence would not have been witnessed by anyone. P.W.15 is an independent witness. Hence, we do not find any reason to reject the evidence of P.W.15. Above all, the prosecution itself has not disowned the evidence of P.W.15.

24. Turning to the evidence of P.W.1, though she has stated that when the deceased was at her house, all these 14 accused, came to her house, in aggressive mood, and the accused 1 to 3 trespassed into her house and though she has stated that when the deceased escaped from her house, all these 14 accused gave a chase and she followed them and witnessed the entire occurrence, during cross-examination she has stated that the distance between the place of occurrence and her house is around 03.00 Kms and she started from her house only five minutes, after the departure of the accused and the deceased from her house and she has further stated that, 10 to 15 minutes thereafter, she went to Thottikulam Village. She has further admitted during cross-examination that the deceased was brought to her house in a motorcycle. Though she has not referred that it was P.W.15, it is inferable that she speaks about the fact that it was only P.W.15, who brought the deceased in the motorcycle. From these admissions made by her in the light of the evidence of P.W.15, it is crystal clear that that the occurrence would not have been witnessed by her at all. Had it been true that she witnessed the occurrence, P.W.15 and Mr.Rajaram would have seen her at the place of occurrence. Thus, the evidence of P.W.1 is highly unbelievable.

25. Now turning to the evidence of P.W.2, it is stated that when he was in the house, the accused 1 to 3 alone came. They entered into his house and attacked the deceased, inside the house. Then they dragged the deceased opposite the house, where, again they attacked him. He has further stated that the second

accused dashed the head of the deceased against the light-post and then they dragged him to a school, nearby. But, in chief-examination, he has not stated anything against accused 4 to 14. According to his evidence, only three people came and attacked the deceased. The evidence of P.W.2 is thus contrary to the evidence of P.W.1, because, P.W.1 has stated that all the 14 accused attacked the deceased indiscriminately with wooden logs. During cross-examination, P.W.2 has admitted that at the time of occurrence, he was 70 years old and his eye-sight was very poor. He has further admitted, during cross-examination, that he had not seen the assailants before the occurrence at all. He has further stated that he told the Police that a crowd of people came and attacked the deceased. Above all, in the observation mahazar prepared, (vide Ex.P-13) no blood stains have been noticed inside the house. This would also give rise to a suspicion regarding his veracity. Had it been true that all these 14 accused had participated in the occurrence, in the chief-examination itself, he would have said about the same. But in chief-examination he has stated that only A-1 to A-3 participated in the occurrence, whereas, in the cross-examination he has stated that not more than 40 people came as a group.

26. Then comes the evidence of P.W.13, the daughter-in-law of P.W.1. She has stated only about the accused 1 to 3 and she has not stated anything about rest of the accused. Had it been true that 14 people had come and attacked the deceased, as it is stated by P.W.1, she would not have stated that only three people came and attacked the deceased. During cross-examination, she has stated that there was a crowd of people and in the crowd, the deceased was lying. She has further stated that she was not even aware of the persons who were in the crowd. Thus, the evidences of P.W.2 and P.W.14 are also doubtful for above anomalies, more particularly, from the evidence of P.W.15.

27. P.W.16 claims to have witnessed the occurrence. He has stated during cross-examination that around 15 to 20 people were on the road, where the deceased was sitting with injuries. His evidence also cannot be given any weightage, in the light of the evidence of P.W.15. Above all, according to P.W.2, the police arrived at the scene of occurrence between 04.00 and 04.30 pm on the day of occurrence. If that be so, the case of the prosecution that the earliest information was given,

which culminated in the First Information Report only at 08.00 pm also becomes doubtful. From the evidences available on record, it is inferable that the deceased could have been attacked by 10 persons near the school and he was abandoned. As spoken to by P.W.15, the occurrence would not have been noticed by any of the so-called witnesses. P.W.15, who came to the scene of occurrence first, on the way of Utkottai Village, has seen the deceased lying with injuries. Then, he had taken him to the house of P.W.1. That is how, the fact that the deceased had been attacked by somebody came to light. It is also inferable that the First Information Report would not have come into being at 08.00 pm, as it is projected by the prosecution. The First Information Report should have come into being only on 21.04.2012, in the morning, and an attempt has been made to implicate as many persons as possible. That is how, the First Information Report had reached the hands of the learned Magistrate at 09.00 am, on 21.04.2012.

28. For these reasons, we find it difficult to sustain the conviction of any of the accused (accused 1 to 14). We also hold that the prosecution has not proved the case beyond all reasonable doubts against all the accused. Therefore, the appellants are entitled for acquittal.

29. In the result, these Criminal Appeals are allowed. The conviction and sentence imposed on the appellants / A-1 to A-14 by the learned District and Principal Sessions Judge, Ariyalur, in S.C.No.83 of 2014, dated 20.04.2016, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

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