

Chitarasu and Others Vs. The State, represented by The Inspector of Police

Chitarasu and Others Vs. The State, represented by The Inspector of Police

SooperKanoon Citation : sooperkanoon.com/1188853

Court : Chennai

Decided On : Aug-19-2016

Judge : S. Nagamuthu & G. Chockalingam

Appeal No. : Crl.Appeal No. 205 of 2016

Appellant : Chitarasu and Others

Respondent : The State, represented by The Inspector of Police

Judgement :

(Prayer: Appeal against the judgment, dated 12.02.2016, made in S.C.No.32 of 2014 on the file of Additional Sessions Court, Ariyalur.)

S. Nagamuthu, J.

1. The appellants are the accused 1,4 and 5 in S.C.No.32 of 2014 on the file of Additional Sessions Court, Ariyalur. The accused 2 and 3 were found to be juveniles in conflict with law and, therefore, the case against them is being dealt with by the Juvenile Justice Board, Ariyalur. The accused stood charged for the offences under Sections 147, 148, 294-B, 341, 324, 307 and 302 read with 149 IPC. By judgment, dated 12.02.2016, the trial Court acquitted the accused 6 and 7 from all the charges, however, convicted these three accused/appellants, as detailed below :

Accused	Section of law	Sentence
A-1, A-4 and A-5	147 I.P.C.	Simple imprisonment for two years and fine of Rs.1,000/- each; in default, to undergo simple imprisonment for one month each.
A-1, A-4 and A-5	148 I.P.C.	Imprisonment for three years and fine of Rs.2,000/- each; in default, to undergo simple imprisonment for two months each.
A-1, A-4 and A-5	341 I.P.C.	Fine of Rs.500/- each; in default, to undergo simple imprisonment for one week each.
A-1, A-4 and A-5	302 r/w. 149 I.P.C.	Imprisonment for life and fine of Rs.25,000/- each; in default, to undergo simple imprisonment for one year each.
A-1	294-B I.P.C.	Fine of Rs.500/-; in default, to undergo simple imprisonment for one week.

Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Kamaraj. P.W.1 is his brother. There was a longstanding enmity between the family of the first accused and the deceased. All these accused hail from the same village. The fourth accused is the brother of the first accused.

2.2. On 17.10.2013, at about 07.30 p.m., P.W.1 and the deceased Kamaraj were proceeding in a motorcycle on Koman Road in Thoothoor village. The deceased was driving the said motorcycle bearing registration No.TN 49 P9398. P.W.1 was the pillion rider. It is alleged that when they were nearing the place of occurrence at the coconut thope belonging to one Kasi, all these seven accused suddenly emerged from the said coconut thope. They were all armed with weapons like spear, aruval and spade with handle. They intercepted motorcycle. The deceased stopped the motorcycle immediately. It is alleged that the first accused attacked the deceased with aruval and also with wooden handle on the head of the deceased. The fourth accused attacked the deceased with aruval on his left hand, left year and other parts of the body. The deceased fell down in a pool of blood. In the same occurrence, it is alleged that the sixth accused Mr.Arjunan attacked P.W.1 with a spear in an attempt to kill him and caused injuries. The fifth accused Mr.Thamarai Selvan attacked P.W.1 with aruval and caused injuries. The seventh accused attempted to cut P.W.1, but P.W.1 escaped. When P.W.1 raised alarm, all the accused fled away from the scene of occurrence.

2.3. On hearing the alarm raised, the villagers gathered at the place of occurrence and, then, with the help of 108 Ambulance, they took P.W.1 and the deceased to Thanjavur Medical College Hospital. On his way, the deceased breathed his last. P.W.1 was admitted at the Thanjavur Medical College Hospital as inpatient. On getting intimation from the hospital, P.W.20 went to Thanjavur Medical College Hospital, recorded the statement of P.W.1 and, on returning to the police station, registered a case in Crime No.68 of 2013 for the offences under Sections 147, 148, 294-B, 341, 324, 307 and 302 IPC. Ex.P-1 is the complaint and Ex.P-25 is

the F.I.R. In the complaint, P.W.1 had mentioned about the presence and participation of all these seven accused. The investigation was, thereafter, taken over by P.W.22. He went to the place of occurrence at 06.00 a.m. on 18.10.2013 and prepared an observation mahazar and a rough sketch, in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he went to the Government Hospital, Ariyalur. He conducted inquest on the body of the deceased and forwarded the same to post-mortem. P.W.16, Dr.Gunasekaran, conducted autopsy on the body of the deceased on 18.10.2013 at 11.50 a.m. He found the following injuries :

1. Laceration (L) temporo parietal occipital region, measuring about 13 x 4 x bone depth.
2. Stab wound, measuring about 1.5 x 1 cm below and lateral to (R) sterno-clavicular joint.
3. Stab wound abdomen 2 x 1 cm 2 cm from midline, 13 cm from xiphoid process, 8 cm from umbilic.
4. Laceration lower lumbar region 5 x 3 bone depth.
5. Abnormal mobility of (L) index finger."

Ex.P-17 is the post-mortem certificate and Ex.P-18 is the final opinion. The doctor opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased.

2.4. P.W.18 collected the bloodstained clothes from the body of the deceased. He examined P.W.1 and a few more witnesses and recorded their statements. On 19.10.2013, P.W.22 arrested the seventh accused at Vazhaikurichi Bus Stand in the presence of the witnesses. On such arrest, the seventh disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the aruval. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the court. He came to know that the accused 1,4 and 5 had surrendered before the learned Judicial Magistrate,

Kumbakonam and the accused 2 and 3 before the learned Judicial Magistrate, Thanjavur. On the orders of the learned Magistrate, he took custody of the accused 1,4 and 5. While in custody, they gave independent voluntary confessions one after another. In pursuance of the said confessions made, the first accused took the police and the witnesses to his house and produced two aruvals, one spear and one spade handle. P.W.18 recovered the same under a mahazar. Then, the fourth accused took the police and the witnesses to his house and produced one aruval, that was recovered. On the same day, the fifth accused also took the police and the witnesses to the place of hideout and produced yet another aruval. That was recovered. He produced one spear also from the place of occurrence. That was recovered. Then, on returning to the police station, P.W.18 forwarded all the accused to the Court for judicial remand. On completing the investigation, he laid chargesheet against all the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 22 witnesses were examined, 35 documents and 12 material objects were marked. Out of the said witnesses, P.W.1 is an injured eye witness. He has spoken about the presence and participation of the seven accused, including the overt acts. He has stated that he accompanied the deceased in the motorcycle and, at that time, the occurrence has taken place. He has identified the weapons used in this case. He has further spoken about the complaint made by him. P.W.2, who was expected to speak about the occurrence as eye witness, has turned hostile and has not supported the prosecution case in any manner. P.Ws.3 to 6 are the villagers, who gathered at the place of occurrence after the occurrence, on hearing the same. They have not stated anything incriminating against the accused. P.W.7 has also spoken about the fact that he heard about the occurrence, went to the place of occurrence and then took the injured and the deceased to the hospital. P.W.9, the chemical analyst, has stated that he analysed the material objects and found human blood on all the material objects. P.W.10 has spoken about the preparation of the observation mahazar and the rough sketch and recovery of material objects from the place of occurrence. P.W.11 has stated that on 17.10.2013, at 07.30 p.m., he, along with others, heard about the occurrence and when they went to the place of

occurrence, the motorcycle belonging to the deceased was lying at the place of occurrence, they took the same and handed over to police. P.W.12 has also spoken on the same facts, as spoken by P.W.11. P.W.13, Constable, has stated that he handed over the F.I.R. and the complaint to the learned Judicial Magistrate on 18.10.2013 at 05.40 a.m. P.W.14, another Constable, has stated that he handed over the visceral organs to forensic lab, for examination. P.W.15 has spoken about the disclosure statements made by the accused 1,4,5 and 6 and the consequential recoveries of material objects on their disclosure statements. P.W.16 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.17 has spoken about the arrest of the seventh accused and the disclosure statement made by him and also the consequential recovery of aruval from his possession.

4. P.W.18, Dr.Jayaprakash, has stated that on 18.10.2013, P.W.1 was brought to Vinodagan Private Hospital at Thanjavur at 12.30 p.m.; he admitted P.W.1 in the hospital as inpatient; at that time, he was conscious and he told that he was attacked by seven known persons of Thoothoor village on 17.10.2013 at 07.30 p.m. When he examined P.W.1, he found the following injuries :

1. A sutured lacerated wound, measuring 7 cm on his head.
2. Tenderness on the chest.

He further stated that P.W.1 underwent treatment in the said hospital till 24.10.2013. Ex.P-21 is the Accident Register. According to him, the injuries are simple in nature. P.W.19 Dr.Balasundaram has stated that P.W.1 was brought to Thanjavur Medical College Hospital on 17.10.2013 at 10.45 p.m. and he told that he was attacked by two known persons with aruval and he was admitted as inpatient. He found a lacerated injury measuring 7 x 2 cm length on the head; a lacerated injury measuring 2 x 1 cm length on the right side of the chest and a stab injury measuring .2 x 0.2 x .5 cm on the left shoulder. P.W.19 has further stated that P.W.1 underwent treatment in the said hospital till 18.10.2013 at 04.00 p.m. and, thereafter, he left the hospital. P.W.20 has stated about the registration of the case on the complaint made by P.W.1. P.W.21 has spoken about the disclosure statement made by the accused 1,2,5 and 6. P.W.22 has spoken about the

investigation done and the filing of the final report.

5. When the accused were questioned under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or to mark any document on their side. Having considered all the above, the trial Court convicted these appellants alone, as detailed in the first paragraph of this judgment. acquitting the accused 6 and 7. That is how, these accused 1,4 and 5 are before this Court with this appeal.

6. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

7. As we have already narrated, the entire case of the prosecution rests upon the eye witnesses account of P.W.1, who is the injured eye witness. From the very fact that P.W.1 had sustained injury in the very same occurrence, it can be conclusively presumed that he was present at the time of occurrence along with the deceased. To that extent, there could be no difficulty for this Court to accept the case of the prosecution. But, whether P.W.1 has deposed only the truth or there is falsity in his evidence is a matter for appreciation.

8. Learned counsel would point out that from the place of occurrence, P.W.1 was taken to Thanjavur Medical College Hospital and admitted as inpatient on 17.10.2013. At that time, P.W.1 told that he was attacked by five known persons and two unknown persons with aruval and eety. Subsequently, when he made statement in Ex.P-1 on 18.10.2013, he gave the names of all the seven persons as assailants. It is not his case that out of the seven named persons in the F.I.R., two were not already known, since all the seven accused were already known to him, as they were his enemies. It is not explained to this Court as to why on 17.10.2013, he told P.W.19 Dr.Balasundaram that he was attacked by two unknown persons also. This is an initial doubt in the case of the prosecution. Thereafter, on 18.10.2013, at 12.30 p.m., he was brought to Vinodagan Private Hospital at Thanjavur and at that time, he told that he was attacked by seven known persons. Thus, P.W.1 was not consistent in his stand at various stages, so far as the number of assailants is concerned. Not stopping with that, before the

trial Court, he has stated about the presence and participation of these seven accused. The trial Court disbelieved P.W.1 as against the accused 6 and 7. Though P.W.1 has stated about the presence and participation of the accused 6 and 7 and their individual overt acts, the trial Court has, for valid reasons, disbelieved P.W.1 as against the accused 6 and 7. This would only mean that P.W.1 is not fully believable and he is only partly believed, even according to the trial Court. The State has not appealed against the judgment of the trial Court, acquitting these accused 6 and 7. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Vadivelu Thevar v. State of Madras, AIR 1957 SC 614, wherein, in an identical case, the Hon'ble Supreme Court held that if a witness is only partly believable and partly un-believable, then, as a rule of caution, the Court should look for corroboration from any other independent source. Here, in this case, the trial Court itself has held that P.W.1 is only partly believable. If that be so, we need to expect corroboration from any other independent source and the material particulars. But, there is no other evidence to corroborate the evidence of P.W.1 as against these appellants. This would further strengthen the doubt, which we have already dealt with in respect of the improvements made, relating to the number of assailants at various stages. Admittedly, all the seven accused either belong to the same family or they are closely related, who were inimical to P.W.1. When P.W.1 happens to be an interested witness and also inimical towards the accused, more particularly, when P.W.1 has rendered himself only partly believable, then, in our considered view, prudence requires that there should be corroboration from any other independent source. Absolutely, there is no other independent source to corroborate the solitary evidence of P.W.1. In our considered view, the possibility of falsification cannot be ruled out in this case. For these reasons, it is not safe to sustain the conviction, solely based on the uncorroborated solitary evidence of P.W.1. Accordingly, we hold that the prosecution has failed to prove the case beyond all reasonable doubts. Therefore, the appellants are entitled for acquittal.

9. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellants by the trial Court are set aside and the appellants are acquitted. The appellants are directed to be set at liberty, unless their custody is required in connection with any other case.

