

Selvaraj and Others Vs. State by The Inspector of Police Vellore South L and O Vellore District

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Court : Chennai

Decided On : Apr-15-2016

Judge : S. Nagamuthu & P. Kalaiyarasan

Appeal No. : Crl.A.No. 256 of 2013

Appellant : Selvaraj and Others

Respondent : State by The Inspector of Police Vellore South L and O Vellore District

Judgement :

(Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the Judgment passed in S.C.No.308 of 2010, dated 18.03.2013, by the learned I Additional District and Sessions Judge, Vellore.)

P. Kalaiyarasan, J.

This criminal appeal is against the Judgment, dated 18.03.2013 made in S.C.No.308 of 2010 on the file of the I Additional District and Sessions Judge, Vellore.

2. The appellants are accused 1 to 4 in the Sessions case. The prosecution arrayed 6 accused in the case before the Sessions Court. The case against the 6th accused was split up as S.C.No.56 of 2011. Therefore, A1 to A5 faced trial. The Trial Court framed as many as five charges as detailed below.

Charge	Accused	Penal Provisions
1	1 to 5	120-B IPC
2	1 to 5	148 IPC
3	1 to 5	302 IPC
4	1	307 IPC (3 counts)
5	2	307 IPC (5 counts)
6	3	307 IPC (4 counts)
7	4	307 IPC (2 counts)
8	5	307 IPC (2 counts)
9	1 to 5	307 r/w 149 IPC

3. By Judgment, dated 18.03.2013, the Trial Court while acquitting A5, convicted and sentenced A1 to A4, as detailed below:

Accused No.	Convicted under Sections	Sentence imposed	Fine amount
1 to 3	148 IPC	To undergo Rigorous Imprisonment for three years	Nil
1 to 3	302 IPC	To undergo Rigorous Imprisonment for life	Rs.10,000/-, in default to undergo Rigorous Imprisonment for four years

1 to 3	307 IPC (3 counts)	To undergo Rigorous Imprisonment for ten years for each count.	Rs.10,000/-, in default to undergo Rigorous Imprisonment for three years for each count.
4	148 IPC	To undergo Rigorous Imprisonment for one year	Nil
4	324 IPC	To undergo Rigorous Imprisonment for one year	Nil
4	326 IPC	To undergo Rigorous Imprisonment for three years	Rs.1,000/-, in default to undergo Rigorous Imprisonment for one year

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the Appellants have come up with this Criminal Appeal.

4. The short facts leading to the filing of the appeal are as follows :

(a) A1 and A4 are husband and wife; A2 and A3 are their sons. Prior enmity between A1's family and the deceased Ramesh family existed in arranging drum for the festival by A1's family and also in drawing water from the street tap. Two days prior to the occurrence, when A4 and A5 came to draw water from the street tap, P.W.1, Suresh, asked to draw 2 vessels of water each, for that she scolded and went away.

(b) On 19.07.2009 at 9 a.m, when deceased, Ramesh, his wife, Latha and his sister, Meena were drawing water, A4 and A5 came there and quarrelled. A4 and A5 left the vessels there and went away and at about 10.30 a.m, when the deceased Ramesh was going for shaving, A1 to A3 armed with Sickle (Veechu Aruval), intercepted near their house and attacked the deceased on his head, right leg and right hand respectively. A4 attacked him on his right leg with the wooden log. When P.W.1 rushed to the spot, A1 to A3 attacked him with Sickles on his head. P.W.2 to P.W.6 also rushed to the spot. A2 and A3 attacked P.W.7 on his head with sickles; A2 attacked P.W.6, Manonmani on her head with sickle; A4 attacked P.W.3, Latha and P.W.5, Vasanthi with the log on the right hand and left thigh respectively. The other accused, namely A5 and A6 also attacked.

(c) P.W.15, Gokul was the witness to the occurrence and he has deposed that after the attack, accused fled away. P.W.1 went to Government Hospital, Vellore and from there, he was referred to Government Medical College Hospital, Adukambarai and other injured went to Government Medical College Hospital, Adukambarai. The deceased was taken to the Government Hospital, Vellore at 11.35 a.m. P.W.18, Dr.Karpagam examined him and found him struggling for his last breath and he died at 11.40 a.m. The Doctor also found the following injuries :

- "1. Laceration on right ankle 6 x 5 cm
2. Laceration on right hand 5 x 4 cm
3. Laceration 10 x 5 cm over the scalp parietal region
4. Laceration 7 x 4 cm over the occipital region."

The AR copy issued by her is Ex.P.15.

(d) On the same day, the same Doctor examined P.W.2, Meena, P.W.3, Latha, P.W.5, Vasanthi, P.W.8, Shankar and found various injuries alleged to have been caused by known persons with sickles and logs. She issued AR copies, Ex.P.16 to Ex.P.19, mentioning the injuries therein. She also examined P.W.4, Susee, P.W.7, Muthu and issued Wound Certificates, Ex.P.20 and Ex.P.21 respectively mentioning the injuries therein.

(e) P.W.1, Suresh lodged complaint before the Sub-Inspector of Police, Vellore South. P.W.26, on receipt of the complaint registered the case. P.W.27, Mr.Pandiyaraj, Inspector of Police took up the case for investigation. He had been to the scene of crime at 3.30 p.m on 19.07.2009 and prepared an observation mahazar, Ex.P.40 in the presence of P.W.10 and P.W.11. He also drew a rough sketch, Ex.P.41. He recovered blood stained small stones with tar, M.O.10, sample stones, M.O.11, shirt buttons, M.O.12 series under a mahazar, Ex.P.42. He examined many witnesses and recorded their statements in the scene of crime and on the same day, he had been to the Government Hospital, Adukambarai, Vellore District and held inquest over the dead body between 6 p.m and 8 p.m in the presence of panchayatdars and prepared Inquest Report, Ex.P.43. Then, he sent the dead body for postmortem through the Head Constable, P.W.17.

(f) P.W.21, Dr.Devi, on receipt of the requisition from the Investigating Officer, conducted autopsy at 1.50 p.m on 20.07.2009. She found the following external injuries :

"1. Oblique incised wound with clean cut margins measuring 7 x 1 cm bone deep seen in the right frontal region of scalp with bevelling of skin.

2. Oblique incised wound with clean cut margins adjacent to the previous wound measuring 5 x 0.5 cm x scalp deep in the right frontal region of the scalp.

3. Oblique incised wound with clean cut margins measuring 9 x 2 cm x bone deep on the back of the head left side. Bevelling is seen in the upper part exposing the underlying fractured skull bone.

4. Oblique incised wound with clean cut margins measuring 5 x 1 x 0.5 cm on the back of left side of head adjacent to the previous wound No.3.

5. Right leg - incised wound with clean cut margins measuring 10x2x4 cm bone deep over outer and posterior aspect of right leg below the ankle. The calcaneum shows a cut fracture to a length of 4 cm. Part of tendocalcaneal ligament and adjoining muscles also severed.

6. Right hand - Oblique incised wound with clean cut margins measuring 6x2x0.5 cm on the back of outer aspect of right hand.
7. Multiple scratch abrasions ranging from 5-8 cm in length seen on the back of chest and abdomen.
8. Dark red discolouration seen on the back of lower aspect of right side of chest. On dissection - bluish black contusion measuring 12x10x0.5 cm seen. On further dissection ribs 6,7, and 8 fractured in the right infrascapular area with surrounding contusion.
9. On dissection of the head - bluish black scalp contusion measuring 16x11x0.5 cm seen over the occipital and both parietal regions of scalp - bluish black contusion measuring 11x9x0.5 cm seen over the right frontal and right temporal regions of scalp.
10. Communitated fracture of both frontal, both parietal, right temporal and occipital regions of skull over an area of 22x16 seen.
11. Diffuse Subdural hemorrhage and Subarachnoid hemorrhage seen all over the brain surface.
12. Linear fissure fracture measuring 9 cm in length seen extending from the right temporal bone to the right middle cranial fossa.

The Postmortem certificate is Ex.P.24."

(g) After postmortem, P.W.17, Sridhar, Gr.I PC handed over the body to his relatives. He also recovered the dress materials from the body of the deceased and handed over to the Investigating Officer. All the recovered properties were presented in the Court.

(h) After obtaining report of chemical examination, the Doctor opined that the deceased would appear to have died of head injuries sustained. The Investigating Officer arrested A1 and A5 at 10:45 a.m on 20.07.2009, near Ariyur bus stop. He recorded the confession statement voluntarily given by A1 in the presence of P.W.10, Venkatesan and P.W.11, Lakshmanan. The admissible portion of the

confession statement of A1 is Ex.P.44. A1 took the Investigating Officer and the witnesses near muslim grave yard in R.N.Palayam and took out blood stained sickles and logs and handed over the same to the Investigating Officer. The Investigating Officer seized the same under mahazar, Ex.P.45. He sent A1 and A5 to the Court for remand. The other accused surrendered before the Court. The Investigating Officer took the other accused on police custody and he recorded the confession statements of A2 to A4 voluntarily given in the presence of the witnesses. The admissible portion of the confession statement of A2 to A4 are Ex.P.46 to Ex.P.48. Pursuant to the confession statement, A2, A3 and A6 handed over the shirts and the same were recovered under mahazars. The Investigating Officer also took A4 on police custody and recorded the confession statement in the presence of the witnesses. Pursuant to the confession statement, she also handed over the saree and the same was recovered by the Investigating Officer under mahazar.

(i) The Investigating Officer gave a requisition to the Chief Judicial Magistrate for conducting test identification parade. As per the direction of the CJM, P.W.22, Tmt.K.Jothi, Judicial Magistrate, conducted test identification parade on 11.08.2009. The requisition was sent to the Court to send the properties for chemical examination. P.W.23, Scientific Officer, after the chemical examination, sent the report along with serologist report, Ex.P.32 and Ex.P.33 to the Court. The Investigating Officer examined all the witnesses and recorded their statements. After completing the investigation, he laid charge sheet against the accused.

(j) On committal from the Judicial Magistrate No.I, Vellore, the case was taken up for trial by the I Additional District and Sessions Judge, Vellore.

5. During trial, the prosecution examined 27 witnesses and 49 exhibits, apart from 15 material objects were marked. The accused, while being questioned under Section 313 Cr.P.C, with reference to the incriminating materials, denied their complicity in the crime.

6. On the side of defence, 4 documents were marked, including the counter case FIR and wound certificates of A1 and A5.

7. The Trial Court, after having considered the evidence, placed on record, concluded that A1 to A4 are liable to be convicted and sentenced as aforesaid. Hence, the appellants/accused 1 to 4 are before this Court with this appeal.

8. Mr.B.Kumar, learned Senior counsel appearing for the appellants would contend that the injuries on the accused have been suppressed by the prosecution and that when counter case was registered, the prosecution, as contemplated under Section 588-A of Police Standing Orders has not been followed and that the prosecution case is liable to be thrown out, as they have not brought out the true version of the occurrence.

9. We have heard the learned Additional Public Prosecutor on these aspects.

10. We have given our anxious consideration to the rival contentions made by either side and perused the entire records.

11. The case of the prosecution is that when the deceased Ramesh was going to the saloon, A1 to A3 armed with sickles. A4 and another accused armed with logs, intercepted him near their house at 10.30 a.m. on 19.07.2009 and attacked him with the weapons, they were possessing. When the other witnesses, namely, P.W.2 to P.W.8, on seeing and hearing the sound, rushed to the scene of crime, they were also attacked by the accused. The above witnesses sustained injuries in the occurrence. P.W.1 to P.W.8 have in unison deposed about the attack made by A1 to A4 and other two accused on deceased Ramesh and on them. The Doctor-P.W.21, who conducted post-mortem, found oblique incised wounds with contusion on the head of the deceased and that the deceased would appear to have died due to the head injuries sustained. The Doctors P.W.18, P.W.19 and P.W.20, who examined P.W.2 to P.W.8, have deposed about the injuries sustained by them. Thus, it is clear from the above evidence that the deceased as well as P.W.1 to P.W.8 sustained injuries in the occurrence. Though the injured witnesses as well as the eye-witness P.W.15 have spoken about the attack by the accused, their evidence is not without any contradiction. P.W.26, the Sub Inspector of Police, who registered FIR says during cross-examination that there is an entry in the general diary of the police station for lodging a complaint at 11.00 a.m. on 19.07.2009 by P.W.1. But, he registered FIR on the complaint lodged at

2.00 p.m. by P.W.1. Thus, the earlier complaint given at 11.00 a.m. is not before the Court.

12. P.W.1 says during cross-examination that he was admitted in Government Hospital, Adukambarai at 12 noon on 19.07.2009 and at that time, doctors obtained signature from his mother as his condition became bad. But, curiously, he says that on permission from the hospital, he had been to the police station and lodged the complaint at 2.00 p.m. Nothing is also forthcoming about the said permission, either from the doctor or the Investigating Officer. It is highly unbelievable that an in-patient, that too, when his condition became worse, came out of the hospital and lodged a complaint in the police station.

13. The Investigating Officer, P.W.27 admits during his cross-examination about the registration of a counter case in crime No.397 of 2009. He says that the above counter case was referred as closed by filing Referred Charge Sheet. The F.I.R. of the counter case is also marked as Ex.D4. The counter case was registered on the basis of the complaint given by A1 in this case. The Investigating Officer has not placed any material about the counter case in this case. It is not the case of the prosecution that the Investigating Officer took up the counter case along with this case and investigated.

14. Yet another contention of the learned Senior Counsel appearing for the appellants is that the injuries sustained by the accused in the same occurrence were not explained by the prosecution and therefore, the prosecution version is to be thrown out by citing the Supreme Court's decision, **Lakshmi Singh Vs State of Bihar**, reported in **(1976) 4 SCC 394**. The Supreme Court, following the ratio in the decision of **Mohar Rai Vs State of Bihar, (1968) 3 SCR 525**, clearly observed as follows :

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabalise the plea taken by the appellants.

...

...

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable ;

(3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case."

15. The Investigating Officer, in his cross-examination admits that he came to know that A1 and A5 sustained injuries. P.W.18 the Government Hospital doctor during cross-examination says that he examined A5 and A1, found injuries and issued the certificates Ex.D2 and Ex.D3. As per the above evidence, A5 sustained injuries including two fractures. The injuries sustained by the accused have not been explained by the prosecution. Though the injured witnesses and another ocular witness had in unison deposed about the attack by the accused, they have not even whispered about the injuries sustained by the accused in the same occurrence.

16. The prosecution has suppressed the genesis and the origin of the occurrence. Thus, the prosecution has not presented the true version of the occurrence. In view of the above discussions, we are firmly of the view that it is not safe to fasten criminal liability upon the appellants 1 to 4, as had been done by the trial Court.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants 1 to 4 / accused by the learned I Additional District and Sessions Judge, Vellore in S.C.No.308 of 2010, dated 18.03.2013, is set aside and the appellants/accused are acquitted from the charges. The fine amount, if

any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/accused, shall stand cancelled.

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