

1. Sorattaiyan Vs. The State

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Court : Chennai

Decided On : Jan-09-2015

Judge : M.Sathyanarayanan

Appellant : 1. Sorattaiyan

Respondent : The State

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

09. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.227 of 2007 1. Sorattaiyan 2. Selvam 3. Veeran 4. Manthaiyan 5. Thiraviyam ... Appellants/ Accused No.1 to 5 Vs. The State through the Inspector of Police, Oomatchikulam Police Station, Madurai District. Crime No.423 of 1997. ... Respondent/ Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment and conviction passed by the learned Additional District and Sessions Judge, F.T.C. No.II, Madurai in S.C.No.573 of 2006, dated 07.03.2007. !For Appellants : Mr.M.Subash Babu ^For Respondent/State : Mrs.S.Prabha Government Advocate (Crl.Side) :

JUDGMENT

The appellants are arrayed as A.1 to A.5 in S.C.No.573 of 2006 on the file of the Court of Additional District and Sessions Judge/ Fast Track Court No.II, Madurai.

They are stood charged, tried and convicted as follows: Accused Charges A.1 to A.5 147, 148, 342, 307 r/w 149 I.P.C. Accused Conviction Sentence A.1, A.4 and A.5 A.2 and A.3 A.1 A.2 and A.3 A.1, A.4 and A.5 A.4 and A.5 147 I.P.C. to undergo two years rigorous imprisonment and imposed fine of Rs.3,000/- each, in default to undergo 6 months rigorous imprisonment each. 148 I.P.C. to undergo three years rigorous imprisonment and imposed fine of Rs.5,000/- each, in default one year rigorous imprisonment . 341 I.P.C. to undergo one month simple imprisonment and imposed a fine of Rs.500/-, in default to undergo one week simple imprisonment. 324 I.P.C. to undergo rigorous imprisonment for 3 years and imposed a fine of Rs.5,000/- each, in default to undergo one year rigorous imprisonment. 324 r/w 149 I.P.C. to undergo rigorous imprisonment for three years and imposed a fine of Rs.5,000/- each, in default to undergo one year rigorous imprisonment 323 I.P.C. to undergo rigorous imprisonment for one year and imposed a fine of Rs.1,000/- each, in default to undergo four months rigorous imprisonment. The trial Court has ordered set off under Section 428 Cr.P.C. with regard to the period of incarceration already undergone by the appellant/accused.

2. The facts leading to the filing of the present Criminal Appeal are stated as follows:

2. 1. P.W.1/defacto complainant is the injured witness and according to him, he is a residence of Melakallanthiri and eking out his livelihood by doing coolie work. On 17.12.1997, the father of Thavamani viz., Chinnakannu died and he and A.2 Selvam had danced and at that time, A.2 questioned him as to why he danced and therefore, pushed him down and he has fallen down. In this regard P.W.1 has slapped A.2 and others intervened and pacified them. 2.2. P.W.1, had gone to Appan Thiruppathi and returned back and alighted from the bus at about 08.30 a.m. on 18.12.1997 and immediately after getting down in front of the Primary Health Centre, A.1-elder brother of A.2 Selvam has questioned as to why he has beaten his brother and caught hold of his shirt. A.2- Selvam, his brother Matchakalai (since deceased) joined together and attacked him with Aruvals. A.2 cut on the left cheek and Matchakalai cut him on the right of the forehead and right side of the chest. A.3 attacked him by using a stick on the right sight of his neck and back and caused contused injuries. The brother-in-laws of A.2 viZ., A.4 and

A.5 attacked him by using their hands. P.W.1 unable to bear the pain, raised an alarm and on hearing the alarm, Periasamy S/o Perumal (not examined), the uncle's son of P.W.1 viz., Vasanth (P.W.2), Panaiyan (P.W.3) S/o of Chinnaiyan came and pacified and by that time, P.W.1 ruined. P.W.1 was taken by his wife, his father-in-law Maharajan to the Government Hospital at Madurai and admitted him for treatment. The Head Constable attached to Oomatchikulam Police Station (not examined) came to Ward No.99, in which, P.W.1 was taking treatment and recorded his statement and it was reduced into writing. The said statement was marked as Ex.P.1 and based on the complaint, Head Constable 465 viz., S.Krishnan attached to Oomatchikulam Police Station registered a case in Cr.No.423 of 1997 for the commission of the offences under Sections 147, 341, 323, 324 and 307 I.P.C. at about 13.15 hours on 18.12.1997. The printed F.I.R. is marked as Ex.P.5 2.3. P.W.8 was the Inspector of Police at the relevant point of time. On receipt of the F.I.R. - Ex.P.5, registered by the Head Constable S.Krishnan, he took up the investigation and proceeded to the scene of crime and prepared a sketch marked as Ex.P.6 and also prepared Observation Mahazar marked as Ex.P.7. The said Officer has examined P.W.1 to P.W.10 and recorded the statements individually and thereafter, examined P.W.1. The said Official has recorded the statement of P.W.1 and after the completion of investigation, P.W.8 continued the investigation and recorded the statements of P.W.1 to P.W.8 individually, based on which, he further recorded the statement of P.W.1 on 27.01.2003. P.W.8, after completion of the investigation and after obtaining the opinion from the Deputy Director of Prosecution, has filed a final report on 31.01.2003 charging the accused for the commission of offences under Sections 147, 148, 342, 307 r/w 149 I.P.C. 2.4. The Court of Judicial Magistrate No.II, Madurai, on filing of the final report, took it on file in P.R.C.No.25 of 2004 and issued summons to the accused and on their appearance, they were furnished copies of documents under Section 207 Cr.P.C. The said Court having found that the case is exclusively triable by the Sessions Court, has committed the case to the Court of Principal Sessions Judge, Madurai, which in turn, made over the same to the Additional Sessions Judge/F.T.C.No.II, Madurai. 2.5. The said Court on appearance of the accused, has framed the charges against them under Sections 147, 148, 342, 307 r/w 149 I.P.C. and questioned them and they pleaded

not guilty to the charges framed against them and prayed for trial of the case. 2.6. The prosecution in order to sustain their case, has examined P.W.1 to P.W.8 and marked Exs.P.1 to P.7. 2.7. All the accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false. 2.8. On behalf of the accused, no oral evidence was let in and no documents were marked. 2.9. The trial Court on appreciation of oral and documentary evidence, found all the accused guilty and convicted them and imposed the sentence as stated above. Challenging the legality of the same, the accused preferred this Criminal Appeal.

3. Mr.S.Subash Babu, learned Counsel appearing for the appellants has drawn the attention of this Court to the testimonies of P.W.1-injured witness and P.W.2, who is relative to P.W.1 and would submit that even as per their versions, the offence could not have been committed and the predecessor of P.W.8 has not conducted a proper investigation and falsely implicated the accused.

4. It is further submitted by the learned Counsel appearing for the appellants that though according to P.W.1, he was attacked by using of lethal weapons viz., Aruval and also attacked by stick, admittedly the weapons have not been recovered till date and in the absence of recovery of weapons and subjected them to chemical analysis, the nature of injuries sustained by P.W.1 cannot be proved. It is also submitted by the learned Counsel appearing for the appellants, by drawing the attention of this Court to the testimony of P.W.8 that though the occurrence took place on 17.12.1997, the statement under Ex.P.1 was recorded on 18.12.1997 and it was dispatched to the Court only on 23.12.1997 and further that the wound certificate was obtained only on 22.07.1999 and he has failed to explain the reasons as to the belated dispatch of material documents.

5. Drawing further attention of this Court to the cross-examination of P.W.8, the learned Counsel appearing for the appellants would submit that it is admitted by P.W.8 that though the investigation has been completed, the final report was not filed in time and he was also not aware of the reasons and he has also failed to explain the delay in belated filing of the final report.

6. In sum and substance, it is the submission of the learned Counsel for the appellants/accused that since the case projected bristles with many infirmities and inconsistencies, the trial Court, in any event, ought to have awarded benefit of doubt and acquitted the appellants/accused, instead, has chosen to convict and imposed severe sentence and therefore, he prayed for interference.

7. Per contra, Mrs.S.Prabha, learned Government Advocate (Criminal Side) for the respondent would contend that the injured himself is a prime witness and he was examined as P.W.1. While he was taking treatment in Government Rajaji Hospital, Madurai, the statement was recorded by the Head Constable, S.Krishnan, based on which, Ex.P.5 - F.I.R. came into existence and his oral testimony is in consonance with the contents of the F.I.R. and it may not be corroborated by the testimony of P.W.3.

8. It is further submitted by the learned Government Advocate (Crl.Side) that though some discrepancies have been pointed out by the learned Counsel appearing for the appellants, it can be termed as only trivial and the same would not affect the case of the prosecution and would further add that since the trial Court on proper consideration and appreciation of oral and documentary evidence, has correctly reached the conclusion to convict the appellants/accused and imposed sentences and hence, interference may not be warranted at the hands of this Court in exercise of the appellate jurisdiction.

9. This Court has carefully considered the rival submissions made by the learned Counsel for the appellants/accused as well as the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

10. P.W.1 in the cross-examination would admit that just opposite to the bus stop, in which, the occurrence took place near the Primary Health Centre and on alighting from the bus, A.1 pulled his shirt collar on the backside and thereafter, he was attacked by the accused and it took place within a span of five minutes and he has also not seen the other eye- witnesses standing nearby. Subsequently, he has become unconscious and he was taken to the hospital and when the vehicle was nearing Apppan Thiruppathi, he regained conscious.

11. P.W.1 would further submit that against him, a case has been registered by Anna Nagar Police Station with regard to the beating of Police Constable which was ended about 9 years ago and denied the suggestion that he is a history sheeted rowdy. P.W.1 also denied the suggestion that he has sustained injuries while he was in a inebriated condition.

12. It is further deposed by P.W.1 in his cross-examination that on account of attack, he sustained blood stains in his shirt and he did not remember as to whether it is handed over to the police or not.

13. P.W.1 is the uncle of P.W.2 and he would depose that he was studying in the College at the relevant point of time. On 18.12.1997, he was reading a newspaper in a shop owned by Ramakaruppan and at that time, his uncle/P.W.1 was alighting from the bus and he was surrounded by A.1, A.2 and the deceased Matchakalai and they attacked him with Aruval and others attacked him with stick and hands. Immediately, his uncle/P.W.1 became unconscious and he, his father along with the wife of P.W.1, took him to Government Hospital at Madurai. In the cross-examination, P.W.2 admitted that at the time of recording the statement by the police, he did not state that his uncle has alighted from the bus and would further depose that the occurrence took place within a span of one minute. P.W.2 further deposed that the accused/appellants are also related to and later would depose that the occurrence took place within a span of 10 minutes inside the compound of the Government Primary Health centre.

14. The other witness viz., P.W.3 was treated as a hostile witness and P.W.4 - wife of the injured is a hear-say witness. When she heard the news, she rushed to the scene of crime. P.W.5 and P.W.6 are the witnesses to the rough sketch and observation mahazar and they have turned hostile. P.W.7 is the Doctor, who treated P.W.1 and he would depose that about 09.15 a.m., on 18.12.1997, P.W.1 was in casualty medical ward and he took treatment and he told that he was attacked by known persons by using Aruval and Kathi and it occurred about 07.30 a.m. at Kallanthiri. P.W.7, after examining P.W.1, has opined that he sustained multiple injuries and issued Ex.P.4-wound certificate.

15. P.W.8 - Investigating Officer, in the cross-examination, would depose that the case was registered on 18.12.1997 and made crucial admission that his predecessor viz., Mohammed Thaheen Hussain has recorded all the statements of the witnesses on 18.12.1997 itself and prepared all documents pertaining to the case on that date. It was suggested to P.W.8 that the F.I.R. was dispatched to the Court on 23.12.1997 and he answered it by saying that he was not aware of the same. He would further admit that the wound certificate prepared by P.W.7 was obtained only on 22.07.1999 and he was not in a position to tell the reasons as to the belated filing of the charge sheet, after five years, though having been completed on 18.12.1997 itself. It is further admitted by P.W.8 that the Head Constable who went to the Government Rajaji Hospital at Madurai, recorded the statement of P.W.1 and the intimation given to the Head Constable who recorded the statement of P.W.1 in the hospital was not seized and further made a crucial admission that he has not seized the blood stained clothe worn by P.W.1 and the weapons used by the accused. However, he denied the suggestion that his predecessor did not seize the crucial materials as the occurrence did not take place in the manner stated by the prosecution.

16. This Court has also perused the original records. Ex.P.1 statement given by P.W.1 to the Head Constable attached to the Oomatchikulam Police Station, though recorded on 18.12.1997 as well as Ex.P.5-F.I.R. which was registered based on Ex.P.1, have reached the jurisdictional Court on 23.12.1997 at 10.00a.m. It has to be pointed out at this juncture that the occurrence took place on 18.12.1997 at about 08.30 a.m. and the F.I.R. came to be registered at 13.15 hours on that day and further, it reached the Court only on 23.12.1997.

17. It is a settled position of law that belated dispatch of complaint and F.I.R. on the basis of which it cannot be construed as fatal to the case of the prosecution, if the Investigation Officer is able to explain the delay in dispatch of the crucial documents. P.W.8 was specifically questioned as to the belated dispatch of the F.I.R. and he pleaded ignorance to the same.

18. It is also to be pointed out at this juncture that according to P.W.8, his predecessor viz., Mohammed Taheen Hussain has examined and recorded the

statements of all the witnesses on 18.12.1997 and collected all the documents on the very same day, but added that the wound certificate marked as Ex.P.4 prepared by P.W.7 was collected only on 22.07.1999. P.W.8 in the chief examination would admit that he recorded the further statement of P.W.1 on 27.01.2003 and filed the final report on 31.01.2003, nearly after five years from the date on which the predecessor of P.W.8 has completed the investigation.

19. A specific question was put to P.W.8 as to why he took 5 years to file the final report and he is unable to offer any plausible answer for the said huge and long delay.

20. According to P.W.1, he alighted from the bus at about 08.30 a.m. on 18.12.1997 and he was attacked by all the accused in front of the Primary Health centre. But, according to P.W.2 who is also cited as an eyewitness - close relative of P.W.1, the occurrence took place inside the compound of Government Primary Health Centre. Therefore, the place of occurrence is also varied and shifted. That apart, the crucial material objects, such as, blood stained clothe worn by P.W.1 and the weapons used by the accused viz., aruval and sticks have not been recovered till date. P.W.8 once again has failed to offer any plausible explanation as to the said lapse.

21. Though according to the prosecution, P.W.1 is an injured witness and his oral testimony was corroborated by material particulars by his relative P.W.2, in the considered opinion of the Court, a grave doubt has arisen in the case projected by the prosecution. It is a settled position of law that the defective investigation will per se may not lead to the acquittal and that the testimony of the injured witness carries a great weight. In the opinion of this Court, the infirmities pointed out through the testimony of P.W.8 and also non-fixing of the spot/place of occurrence and non-seizure of material objects viz., blood stained clothe and the weapons used by the accused and non-sending them to the chemical analysis, coupled with the fact of belated dispatch of Ex.P.1 - complaint and the F.I.R, had shaken the very foundation laid down by the prosecution. That apart, it is a categorical admission of P.W.8 - Investigation Officer that his predecessor viz., Mohammed Taheen Hussain has completed the investigation as early as on 18.12.1997. In all

aspects, this Court is not in a position to note and appreciate that it took another 5 years to file the final report. It is unable to appreciate. Further statement was also recorded after 5 years on 27.01.2003.

22. In the considered opinion of this Court, the investigation done by P.W.8 which is tardy and perfunctory and the infirmities as pointed above, had gone into the root of the case projected by the prosecution.

23. In view of the above said infirmities pointed above, this Court left with no other option except to come to the conclusion that the prosecution has miserably failed to prove the case projected by them beyond any reasonable doubt and therefore, the said benefit of doubt shall inure in favour of the appellants/accused.

24. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed in S.C.No.573 of 2006, vide judgment dated 07.03.2007, by the learned Additional District and Sessions Judge, Fast Track Court No.II, Madurai, are set aside and the appellants/accused are acquitted. Fine amount, if any, paid by the appellants, shall be refunded to them. The bail bonds executed by them shall stand terminated. Index :Yes/No Internet :Yes/No 09.01.2015 ssl To 1.The Inspector of Police, Oomatchikulam Police Station, Madurai District.

2. The Court of Additional District and Sessions Judge, Fast Track Court No.II, Madurai 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

ssl Criminal Appeal (MD)No.227 of 2007 09.01.2015

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