

Veerabagu Thevar Vs. The State Represented By

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Court : Chennai

Decided On : Mar-03-2015

Judge : M.Sathyannarayanan

Appellant : Veerabagu Thevar

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 03.03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal(MD)No.351 of 2006 Veerabagu Thevar ..Appellant versus The State represented by The Inspector of Police, Thattaparai Police Station, Cr.No.12/2004, Tuticorin District..Respondent Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed by the Additional Sessions Judge, Fast Track Court No.II, Tuticorin, Tuticorin District in S.C.No.193 of 2005 dated 13.07.2006.

!For Appellant : Mr.V.Kathirvelu, Sr.Counsel for Mr.K.Prabhu ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) :

JUDGMENT

The sole accused in S.C.No.193 of 2005 on the file of the Court of Additional District and Sessions Judge / Fast Track Court No.2, Thoothukudi, vide judgment dated 13.07.2006, stood charged and convicted as follows: (a)Section 307 IPC ?.

10 years Rigorous Imprisonment with a fine of Rs.1,000/- with default sentence of 6 months; (b)Section 326 IPC ?.

7 years Rigorous Imprisonment with a fine of Rs.1,000/- with default sentence of 6 months.

2.The Trial Court ordered the sentence of imprisonment to run concurrently and also ordered set off under Section 428 Cr.P.C.3.The accused, aggrieved by the conviction and sentence imposed by the Trial Court vide the impugned judgment, has filed this appeal.

4.The facts leading to the filing of this appeal, narrated in brief and necessary for the disposal are as follows: P.W.1 is the resident of Melathattaparai and he is living along with his wife P.W.2, and is running a betel nut shop to eke out his livelihood.

The youngest son of P.Ws.1 and 2, viz.

Santhanam loved the daughter of the appellant / accused, viz.

Pooranam and expressed his wish to marry her.

However, P.Ws.1 and 2, the parents of Santhanam did not accede to the said proposal.

Consequently there existed enmity between P.Ws.1 and 2 and the appellant / accused.

The appellant / accused, as a sequel to the said motive, came to the shop of P.W.1 at about 6.00 p.m.on 22.01.2004 armed with aruval and abused P.W.1 by using unparliamentary words.

The appellant / accused attempted to cut P.W.1 with aruval (M.O.3) carried by him and it was prevented by P.W.1 by blocking it with his right hand.

Therefore, the act resulted in severing of the big finger, index finger and middle finger of P.W.1.

The appellant / accused again attacked P.W.1 on the left fore arm and caused him bleeding injuries.

P.W.2, the wife of P.W.1, on seeing the occurrence, raised an alarm and on seeing her, the appellant / accused chased her, and in front of their house, attacked P.W.2 with aruval and consequently, her left hand from the wrist, got severed totally.

The said incident was also witnessed by the son of P.Ws.1 and 2 viz.

P.W.3, and his daughter P.W.4.

The appellant / accused fled away from the scene of crime with aruval.

P.W.3, who is the son of P.Ws.1 and 2, took him to the Thoothukudi Government Hospital and admitted him.

P.W.10 was the Inspector of Police attached to Thattaparai Police Station.

He received a wireless information with regard to the said accident at about 19.00 hours on 22.01.2004 and he immediately proceeded to the Government Hospital, Thoothukudi and saw P.Ws.1 and 2 and recorded the statement of P.W.1 and reduced it into writing.

P.W.1, on acknowledging the contents of the statement as true, put his left hand thumb impression.

The said statement / complaint was marked as Ex.P1.

P.W.10 proceeded to the Police Station and registered the FiRs.Information Report in Crime No.12 of 2004 against the appellant / accused for the commission of offences under Sections 326 and 307 IPC.

The printed F.I.R.was marked as Ex.P10.

P.W.10 has despatched the original of Ex.P1 and Ex.P10-FiRs.Information Report to the Jurisdictional Magistrate Court and thereafter took up investigation and proceeded to the scene of crime.

5.P.W.10, in the presence of P.Ws.6 and 7 has prepared the Observation Mahazar marked as Ex.P11 and Sketc.marked as Ex.P12 and on the same day examined P.Ws.1, 2, 3, 4 and three other witnesses and recorded their statements under Section 161(3) Cr.P.C.P.W.10 collected the blood stained earth and sample earth in the presence of P.Ws.6 and 7 under the cover of Mahazar marked as Ex.P13.

P.W.10, while examining P.Ws.1 and 2 in the Government Hospital, Thoothukudi, collected M.Os.1, 2, 4 and 5 under Form-95 and sent the same to the Jurisdictional Magistrate.

P.W.10 effected arrest of the appellant / accused at about 14.00 hours on 25.01.2004 and he voluntarily came forward to give a confessional statement and it was recorded in the presence of P.W.8.

As per the admissible portion of the confessional statement marked as Ex.P14, M.O.3-Aruval was recovered under the cover of Mahazar-Ex.P15 in the presence of the very same witnesses and subsequently sent the appellant / accused for judicial custody.

6.Thereafter, P.W.12 took up investigation and examined P.W.9 who initially treated P.Ws.1 and 2, and collected the certified copies of Accident Register marked as Exs.P6 and P7, and after investigation, filed the charge sheet on 30.07.2004 charging the accused for the commission of offences under Sections 326 and 307 of IPC.

7.The Court of Judicial Magistrate No.1, Thoothukudi, on filing of the charge sheet, issued summons to the appellant / accused and furnished him the copies of documents under Section 207 Cr.P.C.and having found that the case is exclusively triable by the Sessions Court, committed the case to the Principal Sessions Court at Thoothukudi, which in turn, made over the case to the Court of Additional Sessions Judge, Fast Track Court No.2, Thoothukudi.

The Trial Court, on appearance of the appellant /accused, has framed charges under Sections 307 and 326 IPC and questioned him and he pleaded not guilty of the charges framed against him.

8.The prosecution, in order to sustain their case, has examined P.Ws.1 to 12, marked Exs.P1 to P15 and M.Os.1 to 9.

The appellant / accused was questioned under Section 313(1)(b) of Cr.P.C.as to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

9.The appellant / accused did not let in any oral evidence and also not marked any exhibits.

10.The Trial Court, on consideration of the oral and documentary evidences, has convicted and sentenced the appellant / accused as stated above.

11.Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant / accused made the following submissions: (a)The place of occurrence has been shifted, as evidenced by Exs.P11 and P12 and the prosecution has failed to establish whether the fiRs.occurrence took place near the shop of P.W.1 and the second occurrence took place near the house of P.W.1 and since the prosecution has failed to establish the place of occurrence, the case itself became doubtful.

(b)P.W.10, after recording the statement of P.W.1, came back to the Police Station and registered the FiRs.Information Report in Crime No.12 of 2004 at about 18.00 hours on 22.01.2004, but however, despatched the F.I.R.before the Jurisdictional Court only at about 24.00 hours on that day.

P.W.10 has failed to explain the reasons for the belated despatch of F.I.R., and it also creates doubt in the case projected by the prosecution.

(c)The Trial Court, while appreciating the evidence of P.Ws.1 and 2, also placed reliance upon the statements recorded under Section 161(3) of Cr.P.C.during the couRs.of investigation and it is unknown to law.

(d)P.W.1 would not have given Ex.P1-statement to P.W.10 for the reason that in his cross-examination, he has clearly deposed that immediately on sustaining the grievous injury, he has become unconscious and woken up 3 days later.

Therefore, Ex.P1 which is the starting point of registration of the case, has become highly doubtful and therefore, the entire case of the prosecution has failed.

(e)The youngest son of P.Ws.1 and 2, viz.

Santhanam and the daughter of the accused Pooranam have not been examined by the Trial Court and thereby the prosecution has failed to prove the motive on the part of the appellant / accused to commit the offence.

(f)P.W.3 had antecedents and it was admitted by P.Ws.1 and 2 in their evidence and P.W.3 also made an attempt to marry his sister-in-law to his youngest brother and since it was not acceded to, P.W.3 had attacked his own parents under the influence of alcohol and the said fact has not been taken into consideration by the Trial Court.

(g)The testimony of P.W.4 cannot be relied upon for the reason that the Trial Court, before recording her evidence, has failed to put a relevant question as to whether she was diligent enough to depose and speak about the occurrence.

Hence, her evidence cannot be taken as corroborative circumstance to the oral evidence of P.Ws.1 to 3.

(h)Alternatively, the learned Senior Counsel would contend that at present, the youngest son of P.Ws.1 and 2 along with his wife, the daughter of the appellant / accused are residing with P.Ws.1 and 2 and the difference of opinion between P.Ws.1 and 2 and the appellant /accused has also been amicably resolved and taking into consideration of the fact that the appellant is aged about 69 yeaRs.the conviction recorded under Sections 307 and 326 IPC may be altered into one under Section 335 IPC and appropriate orders could be passed.

12.Per contra, Mrs.S.Prabha, learned Government Advocate (Crl.Side) would contend that the testimonies of the injured witnesses, viz.

P.Ws.1 and 2 corroborate with each other on all material and relevant particulars and Ex.P1 also came to be recorded by P.W.10 immediately on receipt of the wireless information and he also arrested the accused without any loss of time.

Hence, the origin of the occurrence as well as the complaint-Ex.P1 cannot be doubted.

It is further submitted that with regard to the belated despatch of F.I.R., no questions were put to P.Ws.10 and 12 and therefore, it cannot be urged as a ground to suspect the case of the prosecution.

It is also submitted by the learned Government Advocate (Crl.Side) that the testimonies of injured witnesses, viz.

P.Ws.1 and 2 were amply corroborated by P.Ws.3 and 4, the son and granddaughter of P.Ws.1 and 2 respectively, and even if this Court eschews the evidence of the child witness, viz.

P.W.4, the testimony of P.W.3 corroborates on material particulars with that of the testimonies of the witnesses P.Ws.1 and 2.

Lastly, it is contended by the learned Government Advocate (Crl.Side) that on account of the grave and serious attack on the part of the appellant / accused, P.W.1 lost 3 fingers in his right hand and P.W.2 lost her left hand wrist and therefore, no leniency could be shown with reference to the sentence of imprisonment.

Hence, the learned Government Advocate (Crl.Side) prays for dismissal of the appeal.

13.The learned Government Advocate (Crl.Side) also placed reliance upon the judgments of the Hon'ble Supreme Court in State of Uttar Pradesh v.

Naresh reported in (2011) 4 SCC324 and in State of Uttar Pradesh v.

Krishna Master, reported in (2011) 1 SCC (Cri) 381.

14.This Court paid its best attention to the submissions made by the learned Senior Counsel appearing for the appellant / accused and the learned Government Advocate (Crl.Side) and also perused the oral and documentary evidence and other materials placed before it, as well as the original records.

15.The motive for commission of offences, has been proved by the prosecution.

The youngest son of P.Ws.1 and 2 was in love with the daughter of the appellant / accused and he expressed his inclination to marry her and the said request was not acceded to by P.Ws.1 and 2 and in spite of the persistent requests made by the appellant / accused, they have not consented.

Therefore, the appellant / accused, infuriated by the same, came to the shop of P.W.1 at about 6.00 p.m.on 22.01.2004 armed with an aruval and made an attempt to cut on the neck of P.W.1 and it was evaded and blocked by the use of right hand, which had resulted in severing of 3 fingerRs.and the said occurrence was also witnessed by his wife- P.W.2, son-P.W.3 and granddaughter-P.W.4.

Even for the sake of argument it is taken that the prosecution has failed to prove the motive aspect, it is well settled position of law that when the case of the prosecution rests upon ocular testimony, the motive pale into insignificance.

In the case on hand, the prosecution, through the testimonies of P.Ws.1 to 3 had amply proved the motive on the part of the appellant / accused to commit the offence.

According to P.W.1, the initial attack was made near his shop and on seeing the occurrence, his wife, viz.

P.W.2, raised an alarm and she was chased and the second incident took place in front of the house, wherein her left hand wrist was cut by the appellant / accused.

It is submission of the learned Senior Counsel that in Exs.P11 and P12, viz.

Observation Mahazar and Rough Sketch, there are discrepancies with regard to the place of occurrence and therefore, the entire case of the prosecution became doubtful.

In the considered opinion of this Court, the said submission lacks merit for the reason that P.Ws.1, 2 and 3 have specifically spoken to about the places of occurrence and it is also pertinent to point out at this juncture that the occurrence took place on 22.01.2004 and the witnesses were examined by the prosecution

only during May 2006 and in view of the lapse of time and further taking into consideration of the fact that the witnesses are hailing from rural places and are rustic, those kinds of discrepancies did not occur.

In the judgment of the Hon'ble Supreme Court in State of Uttar Pradesh v.

Naresh reported in (2011) 4 SCC324 relied upon by the learned Government Advocate (Crl.Side).it is observed as follows: ¶.30.In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence.

Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon.

However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

¶.9.Exaggerations per se do not render the evidence brittle.

But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.¶.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier.

The omissions which amount to contradictions in material particulars i.e.go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

[Vide State v.

Saravanan ((2008) 17 SCC587, Arumugam v.

State ((2008) 15 SCC590, Mahendra Pratap Singh v.

State of U.P.((2009) 11 SCC334 and Sunil Kumar Sambhudayal Gupta (Dr.) v.

State of Maharashtra ((2010) 13 SCC657]..?.

16.It is submitted by the learned Senior Counsel for the appellant / accused that P.W.1, in his cross examination, has deposed that immediately on sustaining injuries, he became unconscious and woken up 3 days thereafter and hence it would not have been possible for P.W.10 to record his statement at the Government Hospital, Thoothukudi under Ex.P1, and therefore, the entire case projected by the prosecution has fallen to the ground.

As already pointed out, P.W.1 was examined nearly 2 years after the date of occurrence.

The oral evidence of P.W.2 would disclose that P.W.1 was very much conscious at the time of recording the statement by P.W.10, and the oral evidence of the Doctor, viz.

P.W.9 who initially treated P.Ws.1 and 2 coupled with Exs.P6 and P7-Copies of Accident Register would disclose that P.W.1 was very much conscious and hence it cannot be said that Ex.P1 would not have been recorded by P.W.10 in the manner spoken to.

17.The learned Senior Counsel harped on the point that the Trial Court has already placed reliance upon the statements recorded during the couRs.of investigation under Section 161(3) of Cr.P.C., to come to the conclusion that the appellant / accused is guilty of the offence.

In the considered opinion of this Court, de hors the lapse committed by the Trial Court, on an overall appreciation, the Trial Court has reached the conclusion from the testimonies of injured witnesses viz.

P.Ws.1 and 2 supported by other eye witnesses P.Ws.3 and 4 that it was the appellant / accused alone committed the said offence.

18.The learned Senior Counsel has also stressed upon the point that in the absence of cross examination of the younger son of P.W.1 and his wife, motive has not been proved.

The said aspect has also been dealt with by this Court in the earlier paragraphs.

As already pointed out, if the case of the prosecution rests upon ocular testimony, motive pale into insignificance.

19.The learned Senior Counsel also would submit that the two sons of P.Ws.1 and 2 have been committed for the commission of offence of murder and undergoing incarceration and hence the antecedents of P.W.3 is also to be taken for the reason that he is also facing prosecution for attacking the appellant / accused.

20.The antecedents of one of the witnesses cannot be taken as a mitigating factor to suspect the case of the prosecution for the reason that the testimonies of the injured eye witnesses viz.

P.Ws.1 and 2 corroborate with each other on all material particulars.21.The learned Senior Counsel also made a stress on the testimony of P.W.4-child witness, the daughter of P.W.3 and submitted that before examining her, the Trial Court has not put relevant questions to ascertain her mental capability to give evidence.

A perusal of the chief examination of P.W.4 would disclose that a specific question was put and she knows what is true and what is false and she further deposed that if she has stated something which have not happened, that is falsehood.

Therefore, this Court is of the view that P.W.4, at the time of giving evidence, had requisite mental capability to give evidence and her testimony also corroborates on all material particulars with that of P.Ws.1 to 3.

22.P.W.9 who treated P.Ws.1 and 2 and issued Exs.P6 and P7, in the cross-examination, has categorically deposed that the injuries sustained by them are

grievous in nature and when he examined both of them, they were very much conscious.

His testimony also proves that the injuries sustained by the said witnesses are grave and serious in nature.

23. Thus the prosecution, from the testimonies of injured witnesses, viz.

P.Ws.1 and 2 and the testimonies of other eye witnesses, viz.

P.Ws.3 and 4, had established the case beyond any pale of doubt and the Trial Court, on a proper appreciation of oral and documentary evidence, has rightly found the appellant / accused guilty under Sections 307 r/w 326 of IPC.

24. The learned Senior Counsel also made an alternative plea that considering the age of the appellant / accused and the further fact that enmity no longer subsists between the family of P.W.1 and the appellant / accused, the sentence imposed on the appellant / accused may be reduced.

25. This Court heard the submissions of the learned Government Advocate (Crl.Side) also.

26. P.W.2, in her cross examination has deposed that her youngest son viz.

Santhanam and the daughter of the appellant-Pooranam, after marriage are residing with them and they also begotten a female child out of the wedlock.

This Court, taking into consideration of the fact that the appellant / accused is now aged about 69 years and the difference of opinion with regard to the love affair has been amicably resolved, and the friction between them no longer subsists, is of the view that the sentence of imprisonment imposed by the Trial Court for the commission of offences under Sections 307 and 326 IPC requires modification.

27. In the result, the Criminal Appeal is dismissed confirming the conviction of the appellant / accused under Sections 307 and 326 IPC awarded by the Trial Court, vide the impugned judgment dated 13.07.2006 in S.C.No.193 of 2005.

However, the sentence of imprisonment of 10 years awarded under Section 307 IPC is modified to one of 4 years rigorous imprisonment and the sentence of imprisonment of 7 years awarded under Section 326 IPC is modified to one of 3 years rigorous imprisonment, and both the sentences shall run concurrently.

Set-off is also ordered under Section 428 of Cr.P.C. The sentence of fine and default sentence awarded by the Trial Court is maintained.

Bail bonds have been cancelled and the respondent is directed to take necessary and urgent steps to secure the appellant/ accused to undergo the remaining part of the sentence.

Index : Yes/No 03.03.2015 Internet : Yes/No KM To 1. The Inspector of Police, Thattaparai Police Station, Tuticorin District.

2. The Additional Sessions Judge, Fast Track Court No.II, Tuticorin, Tuticorin District.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

M.SATHYANARAYANAN, J.

KM CrI.A.(MD)No.351 of 2006 03.03.2015

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