

1.Johnson Vs. The State, Rep By

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Court : Chennai

Decided On : Aug-03-2015

Judge : S.Nagamuthu

Appellant : 1.Johnson

Respondent : The State, Rep By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

03. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.345 of 2010 1.Johnson S/o.Devasahayam Meenamangalam Puthu Colony Thazhakudy, Kanyakumari District. 2.Baskaran 3.Perinbadhas S/o.Monickam Melacolony Thazhakudy Kanyakumari District. : Appellants Vs. The State, rep by Inspector of Police, Aralvaimozhy Police Station, Kanyakumari District. Crime No.675 of 2004 : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the Sessions Court, Nagercoil, Kanyakumari District in S.C.No.24/2006 dated 27.08.2010. !For Appellants : Mr.V.Kathirvelu Senior counsel for Mr.K.Prabhu ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) There are three appellants in this appeal, who are the accused 1 to 3 in S.C.No.24 of 2006 on the file of the learned Sessions Judge, Kanyakumari at Nagercoil. The trial Court framed as many as eight charges against the accused as follows: Charge Accused Penal Provisions 1 A1, A2 and A3 341 IPC2A1 & A2 324 IPC3A3 324 r/w 34 IPC4A1 & A2 449 IPC5A3 449 r/w 34 IPC6A1 & A2 302 IPC7A3 302 r/w 34 IPC8A1, A2 & A3 427 IPC2 By judgment dated 27.08.2010, the trial Court found the accused guilty under all the charges and accordingly, punished them as detailed hereunder: Accused Conviction under Section Sentence imposed A1 341 IPC one month simple imprisonment 324 IPC Three years rigorous imprisonment 447 IPC Three months rigorous imprisonment 427 IPC Two years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for two months 302 IPC Imprisonment for life and fine of Rs.3,000/-, in default to undergo three months simple imprisonment A2 341 IPC one month simple imprisonment 324 IPC Three years rigorous imprisonment 447 IPC Three months rigorous imprisonment 427 IPC Two years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for two months 302 r/w 34 IPC Imprisonment for life and fine of Rs.3,000/-, in default to undergo three months simple imprisonment A3 341 IPC one month simple imprisonment 447 IPC Three months rigorous imprisonment 427 IPC Two years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for two months 302 r/w 34 IPC Imprisonment for life and fine of Rs.3,000/-, in default to undergo three months simple imprisonment Challenging the said conviction and sentence, the appellants have come up with this appeal.

3. It is brought to our notice that during the pendency of this appeal, the third appellant/third accused passed away. No other person has come up on record to prosecute the appeal on behalf of the deceased third appellant.

4. The case of the prosecution in brief is as follows: The deceased in this case was one Mr.Sundarrajan. P.W.1 is the daughter of the deceased and P.W.3 is his wife. The deceased was the paternal uncle of P.W.2 and the brother-in-law of P.W.4. The deceased was residing at Thazhakudy Village in Kanyakumari District. The accused 1 and 2 are brothers and the third accused is a relative of the

accused 1 and

2. They also belong to the same village. Admittedly, there was ill feeling between the two families, which culminated into a motive. 4.1. It is alleged that on 03.12.2004, P.W.2 was proceeding towards Thazhakudy Amman Temple. At that time, it is alleged that the accused 1 and 2 came there and scolded him in filthy language. In course of the said quarrel, it is alleged that the first accused attacked P.W.2 with an iron rod on the right thumb of P.W.2, which resulted in an injury. The second accused attacked him with iron rod on the left side of the ear and forehead, which resulted in injuries. A3 also joined hands with them and he was physically present sharing the common intention. When the accused 1 and 2 were mounting attack on P.W.2, the deceased, who was sitting inside his shop, questioned the same. Immediately, the accused 1 and 2 armed with weapons, trespassed into the shop and started attacking the deceased also. The first accused attacked the deceased with iron rod on the left side of the head resulting in a bleeding injury. The 2nd accused attacked him with knife on the left wrist of the deceased. The deceased fell down sustaining the above injuries. Then, all the three accused fled away from the scene of occurrence. Thereafter P.W.2 and the deceased were taken to the Government Medical College Hospital at Asaripallam. At 12.30 p.m., P.W.6 ? Dr.Lysander, examined the deceased. He was told that the deceased had sustained injuries at 8.30 a.m. at 03.12.2004 due to the attack by a mob of persons. He was also told that one of the assailants used a knife. When P.W.6 examined him, he found as many as two external injuries on the deceased. The first injury was a lacerated injury with contusion measuring 5 x 5 cm. on the head. There was an overlapping injury measuring 4 x 1 x 1 cm. on the said injury No.1. The 2nd injury was a cut injury measuring 4 x 1 x + cm on the left elbow. P.W.6 admitted the deceased as inpatient in his hospital. 4.2. On the same day, at 9.25 a.m., P.W.6 examined, P.W.2. P.W.2 told him that on the same day, at 8.30 a.m., she was attacked with an iron rod. When P.W.6 examined her, he noticed three external injuries as follows:

(1) A lacerated injury measuring 2 + x 1 x + cm on the right hand.

(2) a lacerated injury measuring 1 + x , , cm on the left ear.

(3) an abrasion extending 2 cm on the forehead. He admitted her also as inpatient. Ex.P6 is the Accident Register relating to the deceased and Ex.P7 is the Accident Register relating to P.W.2. 4.3. On getting intimation from the hospital, P.W.9 the then Head Constable attached to Aralvaimozhi Police Station, proceeded to the hospital at 12.11 hours, he recorded the statement of P.W.1, since the deceased was in an unconscious state. On returning to the police station, on the same day, he registered a case in Crime No.675 of 2004 under Sections 341, 324, 452, 427 and 307 IPC at 3.00 p.m., on 03.12.2004. He forwarded these documents to the Court and handed over the case diary for investigation to the Inspector of Police. 4.4. P.W.14, the then Inspector of Police attached to Aralvaimozhi Police Station took up the case for investigation, proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.5 and another witness. He also prepared an observation mahazar showing the place, where the deceased was attacked inside his shop in the presence of the same witnesses. Then, he examined P.Ws.1 to 4 and recorded their statements. While so, on 04.12.2004, the deceased, who was undergoing treatment in the hospital, succumbed to the injuries. On getting intimation from the hospital regarding the death of the deceased, P.W.14 altered the case into one under Sections 341, 324, 452, 427 and 302 IPC and prepared an alteration report. Ex.P17 is the alteration report. P.W.14 proceeded to the hospital conducted inquest on the body of the deceased in the presence of Panchayatdars and prepared Ex.P18 the inquest report. Then, he forwarded the body for postmortem. 4.5. P.W.13 ?. Dr.V.Paramasivam conducted postmortem on the body of the deceased on 04.12.2004 at 03.50 p.m. at the Government Medical College Hospital at Tirunelveli. During the postmortem, he noticed the following external injuries:

(1) a sutured injury measuring 6 x 1 cm x muscle depth and another overlapping injury measuring 3 x 1 x muscle depth on the head.

(2) an irregular abrasion measuring 5 x 3 c.m. on the right side of the back of chest.

(3) a sutured cut injury measuring 6 x 2 cm on the left parietal region of the head. He noticed bleeding through the injury No.3. Opening the body, he found the blood

clot on all sides of brain. There was no fracture on the skull. On opening the thorax, he found fluid blood measuring 100 ml in the Thorax cavity. He found fracture of ribs 6 to

11. Finally, he gave opinion that the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. Ex.P14 is the Postmortem Certificate.

4.6. Continuing the investigation, P.W.14 arrested the accused. He forwarded the dress materials found on the dead body and the bloodstained earth recovered from the place of occurrence for chemical examination. Ex.P22 is the chemical examination report and Ex.P23 is the Serology Report. According to the said report, human blood was noticed on the dhoti and banian worn by the deceased. P.W.14 examined the Doctors, collected the medical records and finally laid charge sheet against all the three accused. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same.

4.7. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 25 documents were exhibited and 9 material objects were marked. Out of the said witnesses, P.W.2 is the injured eye witness. He has vividly spoken about the attack made on him by the accused 1 and 2 and he has also spoken about the presence of the accused No.3 at the time of occurrence. P.W.1 is the sister of P.W.2, who has stated that she followed P.W.2, when he proceeded to the Temple. At that time, according to her, she witnessed the entire occurrence. She has also vividly spoken about the attack made by the accused 1 and 2 on P.W.2 as well as on the deceased. P.W.3 is the wife of the deceased. According to her, she was in her house at the time of occurrence along with the deceased. The house of the deceased and the shop are in the same hut. P.W.3 claims that she witnessed the entire occurrence and she has also stated vividly about each overt act on the part of A1 and A2. P.W.4, though not a resident of that area, claimed to have come to the place of occurrence to have tea in the shop. He has also stated about the entire occurrence, more particularly, about the overt acts of A1 and A2. P.W.5 has spoken about the observation mahazar prepared by P.W.14 at the place of occurrence both outside the house and inside the house. P.W.6 ?. Dr.Lysander has spoken about the treatment given by him to P.W.2 and the deceased and the admission made as inpatients. P.W.7 the Head Constable has spoken about the

death intimation given by the hospital, which, he duly forwarded to the Aralvaimozhi Police Station. 4.8. P.W.8 Mr.Chandran, the Police Constable attached to Aralvaimozhi has spoken about the fact that he carried the alteration report to the Court and handed over the same to the Court on time. P.W.9 the Head Constable attached to Aralvaimozhi Police Station has stated that on receiving intimation from the hospital, he went to the hospital and since the deceased was unconscious, he recorded the statement from P.W.1 and returned to the police station and registered a case in Crime No.675 of 2004. P.W.10 is the Doctor, who declared the deceased dead and who, in turn, intimated the same to the police. P.W.11 is the Head Constable was the one, who carried the dead body to the hospital after the inquest was over for conducting postmortem. P.W.12 - Sub Inspector of Police attached to the same police station has spoken about the earlier case against the accused, which is stated to be the motive for the present occurrence. P.W.13 has spoken about the postmortem conducted by him and his opinion that the death was due to shock and hemorrhage due to the cumulative effect of all the injuries found on the deceased. P.W.14 has spoken about the investigation done. 4.9. When the incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, they marked as many as five documents as defence documents. Ex.D1 is the carbon copy of the Accident Register of the deceased. Ex.D2 is the Accident Register copy of D.W.2. Ex.D3 is the carbon copy of A2. Ex.D4 is the Accident Register copy of A1 and Ex.D5 is the treatment records of the first accused.

5. The defence of the accused was that the deceased party were the aggressors. Armed with dangerous weapons, they attacked the accused 1 and 2, in which, the accused 1 and 2 sustained serious injuries, in which, one of the injury sustained by the first accused was a fracture. In respect of the said occurrence, there was a case registered in Crime No.674 of 2004 under Sections 341 and 324 IPC as against the deceased party. It is the further case of the defence that the said counter case was not investigated properly. Having considered all the above, the trial Court found the accused guilty and accordingly punished them as detailed in the first paragraph of this judgment. That is how, they are before this Court with this appeal.

6. We have heard the learned Senior counsel for the appellants, the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

7. The learned Senior counsel would mainly focus his arguments on the ground that the prosecution has not come forward with the true version of the occurrence. According to the learned senior counsel, admittedly, there was a counter case in Crime No.674 of 2004 on the complaint of the first accused. But the same was not investigated properly. The learned counsel would further point out that the materials collected during the course of investigation in Crime No.674 of 2004 were not properly placed and proved by the prosecution, though it is a mandatory requirement. The learned senior counsel would next contend that though the accused 1 and 2 sustained serious injuries, more particularly, the first accused had suffered a fracture, the injuries have not been explained away by any of the witnesses. The learned senior counsel would further point out that though it is the legal obligation of the prosecution to be fair to produce all the materials collected during the course of investigation of the counter case, more particularly, the wound certificates and the treatment of records of the accused, the prosecution has deliberately suppressed the same. The learned senior counsel would further point out that these documents were, however, proved by way of defence document.

8. The learned senior counsel would take us through the evidence of P.Ws.1 to 4, who are eye witnesses including P.W.2, who is the injured eye witness. The learned counsel would point out that none of the witnesses have explained away anything about either the presence of the injuries or about the cause for these injuries. Thus, according to the learned senior counsel, the prosecution has suppressed the genesis of the occurrence and the same has not come forward with true version of the occurrence. For this proposition, the learned counsel relies on the judgment of the Hon'ble Supreme Court in Lakshmi Singh and others vs. State of Bihar reported in AIR 1796 SC226 In the end, the learned counsel contended that the prosecution has not proved the case beyond reasonable doubts and therefore, the appellants are entitled for acquittal.

9. The learned Additional Public Prosecutor would, however, oppose these appeals stoutly. According to him, it is true that Crime No.674 of 2004 and Crime No.675 of 2004 are cases in counter. But he would point out that there was proper investigation done in respect of Crime No.674 of 2004 and since it was found that the accused herein were the aggressors, the said case in Crime No.674 of 2004 was referred as 'Mistake of Fact'. The learned Additional Public Prosecutor would further submit that the records, such as, the FIR, the final report were all proved in this case by the prosecution as Exs.P.24 ad 25. Thus, according to the learned Additional Public Prosecutor, the prosecution has not suppressed any materials.

10. The learned Additional Public Prosecutor would further submit that though it is true that P.Ws.1 to 4 have not spoken anything about the injury sustained by the accused 1 and 2, on that score, the accused are not entitled for acquittal, because their evidences are otherwise cogent and convincing. The learned Additional Public Prosecutor would further submit that from the evidences of P.Ws.1 to 4, it has been clearly proved by the prosecution that the accused party were the aggressors. It is in evidence that the accused party had gone to the shop of the deceased, developed quarrel, attacked P.W.2 and the deceased. Thus, according to the learned Additional Public Prosecutor, the prosecution has clearly established that the accused party were the aggressors. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the accused by the trial Court do not require any interference at the hands of this Court.

11. We have considered the above submissions and we have also perused the records carefully.

12. Admittedly, the case in Crime No.674 of 2004 and Crime No.675 of 2004 are cases in counter. It is also in evidence, which is not under dispute that the accused 1 and 2 sustained injuries in the very same occurrence. More precisely, the first accused had sustained a grievous hurt, i.e, a fracture. But, absolutely, there is no explanation in respect of these injuries. The eye witnesses, namely, P.Ws.1 to 4 have not even spoken about the injuries on the accused. Immediately, after the occurrence, the accused 1 and 2 were also taken to the hospital.

13. P.W.6 ?. Dr.Lysandar had treated them in the same hospital. Ex.D.4 is the Accident Register pertaining to the first accused, which shows that there were as many as four injuries as follows: (1) Abrasion 2 cm x , cm x , cm on scalp. (2) Abrasion 4 cm x , cm x , cm on the occipital (3) 2 fractures of terminal phalanx of left index finger. (4) Abrasion right forearm.

14. Ex.D3 is the Accident Register pertaining to the 2nd accused. It shows that there were as many as two injuries, which are as follows: (1) Abrasion 3 c.m x + cm left forearm. (2) Contusion 3 cm x 2 cm left leg. These injuries were noticed by P.W.6 ?. Dr.Lysander. He was told that they were attacked by four known persons. But absolutely, there is no explanation either regarding the presence of these injuries and cause for these injuries by any of the eye witnesses.

15. As per the law laid down by the Hon'ble Supreme Court in Lakshmi Singh's case as stated supra, in a murder case, the non explanation of the injuries sustained by the accused at the time of the occurrence or in the course of the same transaction 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. [AIR 1968 SC1281and AIR 1975 SC1674].

16. In the same judgment, the Hon'ble Supreme Court has further held that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes greater importance, where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

17. Applying the above dictum laid down to the facts of the present case, if we look into the evidences of P.Ws.1 to 4, undoubtedly, they are all interested witnesses and they are closely related to the deceased. There is also enmity between these two families. From these facts, it can be duly perceived that P.Ws.1 to 4 were not

only interested witnesses, but also inimical towards the accused. Since these interested witnesses have not spoken anything about the injuries sustained by the accused, more particularly, about the grievous hurt sustained by the first accused, it is to be presumed that they have not come forward with true version of the occurrence and they are suppressing an important part of the occurrence and we have to therefore hold that the prosecution has suppressed the genesis and origin of the occurrence and they have not presented the true version of the occurrence.

18. Now, turning to the investigation done, it is the law that in cases and counter, both cases should be investigated thoroughly by one and the same officer and final report should be filed by him against the aggressors. It is also the law that during the trial of the case, all the materials collected in the counter case should be placed and proved in evidence. But in this case, unfortunately, except marking the xerox copy of the FIR and the final report, no other materials have been proved in evidence. Even the Investigating Officer has not stated anything as to how, he referred the other case as 'Mistake of Fact'. Though it is contended by the learned Additional Public Prosecutor that the accused party were the aggressors, absolutely, there is no evidence for the same, barring the evidences of P.Ws.1 to 4. It is not as though the occurrence was witnessed only by these four persons. The records revealed that there are lot of houses around the place of occurrence. Even P.W.1, during cross examination, has admitted that there are lot of houses. But the prosecution has not chosen to examine any independent witness from that locality. Had any independent witness been examined from that locality, truth would have come out and in which case, it would have been possible to find out whether the accused party were the aggressors or the deceased party were the aggressors. Thus, non examination of the independent witnesses, in this case, is also a matter, which would go against the prosecution. Thus, in our considered view, the fact that the accused are the aggressors has not been duly established by the prosecution.

19. In view of the foregoing discussions, we hold that the prosecution has not come forward with the true version of the occurrence and thus, the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the conviction and sentence imposed on the appellants by the trial Court is liable to be set aside.

20. In the result, the Criminal Appeal is allowed; the conviction and sentence imposed on the appellants are set aside and the appellants are acquitted. Fine amount, if any paid, shall be refunded to them. Bail bond shall stand terminated. To 1.The Sessions Court, Nagercoil, Kanyakumari District 2.The Inspector of Police, Aralvaimozhy Police Station, Kanyakumari District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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