

Raja Vs. State Through,

Raja Vs. State Through,

SooperKanoon Citation : sooperkanoon.com/64176

Court : Chennai

Decided On : Aug-13-2015

Judge : S.Nagamuthu

Appellant : Raja

Respondent : State Through,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

13. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI CrI.A(MD)Nos.10 of 2014 and 73 of 2014 and M.P(MD)Nos. 1 and 1 of 2014 Raja .. Appellant in CrI.A.No.10/2014 Bala @ Balakrishnan .. Appellant in CrI.A.No.73/2014 Vs. State through, The Inspector of Police, Virudhunagar West Police Station, Virudhunagar District. (In Crime No.256 of 2012) .. Respondent in both cases COMMON PRAYER: Appeals are filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction passed by the learned Additional Sessions Judge, Virudhunagar in S.C.No.186 of 2012, dated 06.11.2013. !For Appellant : Mr.M.Daniel Manoharan in both cases ^For Respondent : Mr.T.Mohan in both cases Additional Public Prosecutor :COMMON

JUDGMENT

(Common Judgment of the Court was made by S.NAGAMUTHU, J) The appellants are the accused 1 and 2 in S.C.No186 of 2012, on the file of the learned Additional Sessions Judge, Virudhunagar. Initially, altogether there were seven accused including these appellants. After charges were framed in this case, it was found that the accused No.4, Mr.Selvamayandi and accused No.8, Mr.Ramachandran were juveniles and therefore the case against them was split up and send to the Juvenile Justice Board for being dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The rest of the accused including the appellants were tried. Finally, the Trial Court, by Judgement, dated 06.11.2013, convicted the first accused under Section 323, 294(b), 506(ii) and 302 r/w 149 I.P.C. and the second accused under Section 302 I.P.C. The other accused were acquitted. These accused 1 and 2 were acquitted from all other charges also. The Trial Court has sentenced the first accused to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months, for the offence under Section 323 I.P.C., to pay a fine of Rs.200/- in default to undergo simple imprisonment for two weeks for the offence under Section 294(b) I.P.C., to undergo rigorous imprisonment of one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under Section 506(ii) I.P.C. and to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months for the offence under Section 302 r/w. 149 I.P.C. The second accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months, for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court, with these Criminal Appeals. 2.The case of the prosecution, in brief, is as follows:- The deceased in this case was an unfortunate young boy, aged 15 years, by name Ramesh. He was a resident of Indra Nagar at Virudhunagar. On 08.04.2012, Panguni Pongal Festival was celebrated in Indra Nagar Muthumariamman Temple and there was also an exhibition conducted in connection with the same. Around 11.00 p.m., the deceased, PW1, PW3 and PW5 had gone to the temple and they were standing near the place, where the exhibition was going on. There was enough light available at that place. At that time, they noticed that A1 was standing starring at them. They approached him and told him that he was new to that place

and they asked him to which place he belonged to. The first accused replied that he also belonged to the same village and he had come to the house of his brother Mr.Balamurugan. He further abused the deceased and others for doubting him. Then, the first accused left the place shouting that he would come back with his men. Thereafter PW5, Mr.Jeyapandian left for seeing Agni Satti Procession which was conducted near the temple. By around 02.45 a.m., all these persons including the deceased, were sitting on the sand bags heaped near Kaliamma temple. There also, there was enough light. While they were so sitting, it is alleged that the first accused came there and developed quarrel. PW1 told him not to quarrel, as any dispute between them could be settled on the next day. The first accused was accompanied by all the other accused herein. It is alleged that the first accused suddenly attacked PW1 on his head with wooden log, which resulted in a simple bleeding injury. The third accused attacked PW1 with a brick on his head near the left ear. This also resulted in an injury. The seventh accused attacked PW4, Mr.Prabhakaran with hand on his cheek. In the same occurrence, it is alleged that the accused 5 and 6 caught hold the deceased. The first accused shouted at the second accused to stab and kill the deceased. The second accused suddenly took out a knife and stabbed the deceased on the left side of his chest. Then the accused 1,2,3 and 9 abused the prosecution party in obscene language. They also criminally intimidated the prosecution party and fled away from the scene of occurrence. 2.1. On hearing the alarm raised, all the accused fled away from the scene of occurrence in a Tata Sumo Car. Then, the people gathered, they brought an auto in which PW1 and his brother, the deceased were taken to the Government Hospital, Virudhunagar. PW8, the Assistant Surgeon attached to the Government Hospital, Virudhunagar, examined the deceased Ramesh and found that there was no life. He declared him dead. He found a single stab injury on the left side of the chest measuring 4x0.5x5 cm. Then, around 03.30 a.m. on 09.04.2012, he examined PW1. PW1 told him that on 09.04.2012, at 2.45 a.m. at Indra Nagar, in front of his house, unidentifiable persons numbering four, had attacked him with bricks and hands. He noticed a single injury on him, that is, a lacerated injury measuring 5x1 cm on the left parietal region of the head. According to PW8, the said injury is simple in nature. Ex.P12 is the Accident Register of the deceased and Ex.P13 is the Accident Register of PW1. Then, he

forwarded the body of the deceased to the mortuary. 2.2. On information from the hospital authorities, PW11 went to the hospital and recorded the statement of PW1 at 04.00 a.m. On returning to the Police Station, he registered a case in Crime No.256 of 2012, under Sections 147, 148, 323, 342, 294(b) and 302 I.P.C. Ex.P1 is the complaint and Ex.P15 is the F.I.R. Then, he forwarded both the documents to the Court and handed over the Case Diary to PW12 for investigation. 2.3. Taking up the case for investigation, PW12 proceeded to the place of occurrence and prepared an observation mahazer and a rough sketch in the presence of PW4 and another witness. Then he recovered blood stained earth and sample earth under a mahazer in the presence of the witnesses. Then, he examined PWs.1 to 3 and 5 and recorded their statements. Then, he conducted inquest on the body of the deceased at 08.00.a.m., on 09.04.2012 and forwarded the body for postmortem. PW10, Dr.Girija, conducted autopsy on the body of the deceased on 09.04.2012 at 1.45 p.m. She noticed the following injuries: External injury: Bleeding penetrating injury present over left 5th intercostal space close to the midline. On opening of neck and thorax and abdomen:Hyoid Bone normal. No ribs fracture. Penetrating injury 4 x 1.7cm with regular ridge, spindle shape. Both lungs appear pale left hemithorax contains about 1.5 to 2.5 lit of blood. Penetrating injury extend from abdomen wall piercing left lobe of live about 5 x 1 cm and then diaphragm and piercing pericardiam to the left ventricle. Laceration of left ventricle about 0.5 x 0.5 cm entering LV chambers. Heart empty. Abdomen cavity contains about 1-1.5 lit of blood. Liver, Spleen, kidney pale. Stomach contain 25-50 ml of partially digested food particle white in colour. On opening of skull: Membrane intact. Brain pale. No skull fracture. Spine & Pelvis :Normal Following viscera sent for chemical analysis 1)Stomach and its content 2)Intestine and its content 3)Piece of liver 4)Piece of Kidney 5)Preservative 2.4. The chemical analysis report revealed that there was no poison or alcohol in the visceral organs. Finally, he gave opinion that the deceased would appear to have died of the injuries to the vital organs viz., the heart and its complications. Ex.P14 is the postmortem certificate. 2.5. Continuing the investigation, PW12 arrested all the eight accused on 09.04.2012 at 06.00 p.m. at Fathima Nagar Bus Stop, Virudhunagar. On such arrest, the first accused gave a voluntary confession in which he disclosed the place, where he had hidden a blood stained shirt. In pursuance of the same, he

took PW12 and the witnesses to the said place and produced the half sleeve blood stained shirt. At 7.30 p.m. the second accused gave a voluntary confession in which he disclosed that he would identify the place where he had hidden the knife. Accordingly, he took the police and the witnesses to Bavali Road, Iyyanar Kovil, from where, he produced the knife and a T-shirt with blood stains. PW12 recovered the same under a Mahazer. Then, he returned to the police station along with the accused and the material objects. Then, he forwarded the accused to Court for judicial remand and handed over the material objects for chemical examination. On 09.04.2012, on arresting the third accused, he recovered a Tata Sumo Car bearing Registration No.T.N.01-K-3505. He made a request to the Court to forward the material objects for chemical analysis. As per the Analyst Report, human blood was noticed on all the material objects, including the knife. But the blood grouping was inconclusive. Thereafter, PW12 examined the doctor, collected medical records and finally laid Charge Sheet against all the accused.

3. Based on the above materials, the Trial Court framed charges. The accused denied the same. In order to prove the case, the prosecution has examined as many as 12 witnesses and marked 22 documents and 10 material objects. Out of the said witnesses PW1 is the injured eye witness. He also happened to be the brother of the deceased. He has spoken about both occurrences, namely, the first occurrence, in which, there was quarrel between the first accused and the prosecution party and the second occurrence, in which, the deceased was killed and PW1 was attacked. PW2 is the father of the deceased, who has stated that he heard about the occurrence. PW3 is a friend of the deceased, who also witnessed the entire occurrence. He has spoken about the same vividly. PW4 has spoken about the observation mahazer and the recovery of bloodstained earth and sample earth from the place of occurrence. PW5 has spoken about the first occurrence, in which there was a quarrel between the first accused and the prosecution party. PW6 has spoken about the arrest of the accused 1 and 2 and the consequential recoveries made. PW7 has spoken about the chemical analysis done on the material objects and the result. PW8, Dr.Shyam, has spoken about the treatment given to P.W.1 by him and the declaration made by him that the deceased was dead. PW9 is the constable, who carried the dead body and handed over the same to the doctor for postmortem. PW10, Dr.Girija, has spoken about the

postmortem conducted and her final opinion. PW11 has spoken about the registration of the case. PW12 has spoken about the investigation done.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side nor to mark any document.

5. Having considered all the above, the Trial Court convicted these appellants alone and acquitted the rest of the accused. Aggrieved over the same, the appellants are before this Court with these Criminal Appeals.

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

7. The learned counsel for the appellants would submit that none of the accused was ever known to PWs 1 and 3 before the occurrence. But there was no Test identification parade held. In the absence of the such Test identification parade, according to the learned counsel, the identification of these accused made in the Court by PWs 1 and 3 for the first time can not be believed and the same cannot be given any weightage. He would further submit that there was enormous delay in the F.I.R. which has not been explained away. Lastly, he would submit that though it is stated that the accused 1 and 2 were arrested at 06.00 p.m. on 09.04.2012, PW2 and P.W.3 stated during cross examination that all the accused were brought to the police station early in the morning on 09.04.2012 itself and they were kept in the police station for the whole day. Thus, according to the learned counsel, the entire case of prosecution is false and the prosecution has failed to prove the case against the accused and therefore they are entitled for acquittal. The learned counsel would further point out that when the evidences of PW1 and PW2 have been disbelieved in respect of the rest of the accused, by applying the same yardstick, these accused should have also been acquitted.

8. The learned Additional Public Prosecutor would however oppose these appeals. According to him, though there is delay in F.I.R and forwarding the F.I.R. to the Court, the same does not cause any doubt in the case of the prosecution. The

learned Additional Public Prosecutor would further submit that though there was no Test identification parade held to enable PW1 and PW3 to identify the assailants, that itself cannot be a ground to reject the evidences of PW1 and PW3. The learned Additional Public Prosecutor would further submit that there is no improbability in the arrest of the accused 1 and 2 and consequential recovery made. Thus, according to him, the conviction and sentence imposed on the appellants does not require any interference at the hands of this Court.

9. We have considered the above submissions.

10. Admittedly, the accused were not previously known to PWs.1, 3 and 5. The first occurrence itself was an unexpected one, which was sudden. It was at 11.00p.m. The second occurrence, according to the prosecution was at 02.45 a.m. In the complaint, when PW1 had gone to the doctor (PW8) at 3.15 a.m., he told the doctor that he was attacked by unidentifiable persons. PW1 has also been fully contradicted with the said statement. Even in the F.I.R., as has been admitted by him, he has stated that he mentioned the names of the accused only after necessary enquiry with third parties. But the person, who gave the names of the accused to him has not been mentioned anywhere and has not been stated by these witnesses. Thus, it is crystal clear that the accused were not known, but, still there was no Test identification parade held at all. Even the persons who identified them by names have not been mentioned during investigation by these witnesses. It needs to be remembered that the occurrence had taken place during night hours. So, whether, assailants could have been identified or not itself is not clear. In this backdrop, though it is not the rule that in every case there has to be Test identification parade held, in our considered view, in a case of this nature, non-holding of Test identification parade creates doubts in the case of the prosecution regarding the identification of the accused.

11. Next comes F.I.R. The alleged occurrence was at 02.45 a.m. and PW1 was in the hospital at 03.15 a.m., as stated by PW8, the doctor. The F.I.R., according to the case of the prosecution, was registered at 06.00 a.m., whereas it has reached the hands of the learned Magistrate only at 04.00 p.m., that is, after 10 hours. Absolutely there is no explanation for the same. The distance between the Police

Station and the Court of the learned Magistrate at Virudhunagar is admittedly around 2 to 3 Kms. But, it is not explained as to why it took about 10 hours for the F.I.R. to reach the court. This creates further doubt that the F.I.R. must be the result of deliberations. This is further fortified from the fact that PW2 and PW3 have categorically admitted during cross examination that on the early hours of 09.04.2012, all the 8 accused were brought by the Inspector of Police to the Police Station and they were kept in the Police Station continuously. From this, it is crystal clear that after the accused had been taken to the Police Station, after knowing their names and father's names, the F.I.R. seems to have been drafted and that is the reason why Ex.P.15 has reached the hands of the learned Magistrate at 04.00 p.m.

12. So far as the arrest of the accused 1 and 2 are concerned, it may not be true that they were arrested at 06.00 p.m., since, PW2 and PW3 had seen these two accused in the police station in the morning itself. Therefore, the so-called confession said to have been made by the accused 1 and 2 and the consequential recoveries of material objects also cannot be believed.

13. Above all, the Trial Court has disbelieved the evidence of the eye witnesses in respect of the rest of the accused. In our considered view, applying the same yardstick, the benefit should have been given to these accused also. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore the accused are entitled for acquittal.

14. While acquitting the accused, this Court cannot close its eyes without looking into the agonies of the victims of the crime. The deceased in this case was a young boy, aged about 15 years. He has lost his precious life. The agonies of his parents are perceivable. The State being the guarantor of the fundamental rights of the citizens, is liable to alleviate their sufferings atleast by paying monetary compensation.

15. With this object, the State of Tamil Nadu has brought into force a scheme, known as "Tamil Nadu Victim Compensation Scheme, 2013", issued under Section 357(A) of the Code of Criminal Procedure. It is also well known that under the said scheme, sufficient fund has been provided by the Government of Tamil

Nadu. Under Subsection 3 of Section 357(A) Cr.P.C., if the trial court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for the rehabilitation or whether the case was ended in acquittal or discharge, and the victim has to be rehabilitated, it may make a recommendation for compensation. It is not in every case, this court would be inclined to make such a recommendation. But, in the instant case, since the precious life of an young boy has been lost, that too for no fault on his part, as there was no motive and the victim was an innocent person, we deem it appropriate that this is a fit case where we should make such a recommendation for compensation to the District Legal Services Authority for award of compensation. It is for District Legal Services Authority, after due enquiry to award adequate compensation to the parents of the deceased. Sub Section 5 mandates that such enquiry shall be completed within a period of two months.

16. In the result, (i) this appeal is allowed; the conviction and sentence imposed on the appellants by the learned Additional Sessions Judge, Virudhunagar, in S.C.No.186 of 2012, dated 06.11.2013, is set aside and they are acquitted. The fine amount, if any, paid by them, shall be refunded to them. Consequently, connected Miscellaneous Petitions are closed. (ii) We make recommendation to the District Legal Services Authority, Virudhunagar to hold enquiry as required under Sub-section 5 of Section 357(A) of Cr.P.C. and complete the same and award adequate compensation to the parents of the deceased as per the Tamil Nadu Victim Compensation Scheme, 2013. To 1.The Additional Sessions Judge, Virudhunagar.. 2.The District Legal Services Authority, Virudhunagar. 2.The Inspector of Police, Virudhunagar West Police Station, Virudhunagar District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com