

State By Vs. 1.Nagarajan

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Court : Chennai

Decided On : Aug-17-2015

Judge : S.Nagamuthu

Appellant : State By

Respondent : 1.Nagarajan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

17. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.267 of 2004 and Criminal Revision No.475 of 2003 C.A (MD).No.267 of 2004 State by Inspector of Police Susindram Police Station Kanyakumari District. : Appellant Vs. 1.Nagarajan 2.Mahalingam 3.Balakrishnan 4.Rajkumar 5.Baskar 6.Manohar 7.Sekar 8.Sundar 9.Rajalingam 10.Mani 11.Biman 12.Thangappan :Respondents PRAYER Appeal is filed under Section 378 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Nagercoil, in S.C.No.231 of 2001 dated 29.10.2002. !For Appellant : Mr.A.Ramar Additional Public Prosecutor ^For Respondent : Mr.M.Jegadheeshpandian for K.J.Associates for R1 to R6 Mr.V.Kathirvelu senior counsel For R7 to R12 for Mr.K.Prabhu CRIMINAL REVISION (MD).No.475 of 2003 Paulraj S/o.Harikrishnan Nadar Kalladivilai Village Agastheeswaram (Taluk) Kanyakumari District. : Appellant Vs. 1.Nagarajan 2.Mahalingam 3.Balakrishnan 4.Rajkumar 5.Baskar 6.Manohar

7.Sekar 8.Sundar 9.Rajalingam 10.Mani 11.Biman 12.Thangappan 13.State rep. by Inspector of Police Suchindram Police Station, Kanyakumari District. :Respondents PRAYER: Revision is filed under Section 401 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Nagercoil, in S.C.No.231 of 2001 dated 29.10.2002. For Petitioner : No appearance For Respondent : Mr.M.Jegadheeshpandian for K.J.Associates for R1 to R6 Mr.V.Kathirvelu senior counsel for R7 to R12 for Mr.K.Prabhu Mr.A.Ramar for R13 Additional Public Prosecutor :COMMON

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The respondents in Criminal Appeal No.267 of 2004 (respondents 1 to 12 in Crl.R.C.No.475 of 2003) are the accused in S.C.No.231 of 2001 on the file of the Additional Sessions Judge, Kanyakumari District at Nagercoil. The trial Court framed as many as five charges against the accused as detailed hereunder: Charge Accused Penal Provisions 1 A1 to A12 147 IPC2A1 to A5 341 IPC3A1 302 IPC4A2 to A12 302 r/w 149 IPC5A7 427 IPC2 By judgment dated 29.10.2002, the trial Court acquitted all the 12 accused. Challenging the same, the State has come up with C.A.No.267 of 2004 and the de-facto complainant has come up with Crl.R.C.No.475 of 2003. Since both these matters assail the acquittal of the respondents 1 to 12, we have heard them together and dispose of by means of this common judgment.

3. The case of the prosecution in brief is as follows: All the accused belong to Kalladivilai Village in Kanyakumari District. The deceased in this case was one Mr.Chellanadar. He also belonged to the same village. P.Ws.1 to 4 also belonged to the same place. There is a common temple known as Mannaraja temple. Every year, for 10 days, there used to be festival in the said temple celebrated by the entire villagers. On 02.05.2000, the 7th day of the festival was going on, in which, a drama was staged in front of the temple. The drama commenced at 10.00 p.m. By about 11.00 p.m., the third accused came there and he wanted the portrait of his aunt to be placed on the platform. The deceased and the villagers including P.W.1 told him that it was not proper to place the portrait of a deceased person on the platform of the drama shed. The 7th accused raised quarrel and virtually prevented the drama being continued. Therefore, the drama was stopped half way

through. At that time, the 7th accused challenged that he would not allow P.W.1 and his family members to live peacefully. Then, P.W.1 the deceased and others left for their house. 3.1. On 05.05.2000, the 10th day of the festival was in progress. Around 10.00 p.m., the 6th accused Mr.Manohar scolded P.W.1 again in connection with the earlier quarrel. When the said quarrel was going on, the rest of the 11 accused gathered there and the others started running out of fear. The deceased, namely, the brother of P.W.1 also was running. A1 to A5 surrounded the deceased and they prevented him from further running. At that time, it is alleged that the first accused hit the deceased with a stone on his right cheek. He fell down. In retaliation P.W.1 threw a stone, which hit the 7th accused. Then, all the accused fled away from the scene of occurrence. Then, P.W.1 immediately rushed to his house and brought a motorcycle to take the deceased to the hospital. But all the 12 accused again gathered there and they physically prevented P.W.1 from taking the deceased to the hospital. The 6th accused kicked the motorcycle. They caused damage to the motorcycle also. Within half an hour, the deceased died on the spot. It was only thereafter the accused fled away from the scene of occurrence. Then, P.Ws.1 and 2 rushed to the police station, where P.W.1 made a complaint to P.W.15. At 12.00 mid night on 05.05.2000, P.W.15 received the complaint from P.W.1 under Ex.P1 and registered a case in Crime No.394 of 2000 under Sections 147, 341 and 302 IPC and Section 3(1) of the TNPPDL Act. Ex.P11 is the FIR. Then, he forwarded the FIR and the complaint through P.W.14 to the Court and handed over the Case Diary to the Inspector of Police for investigation. 3.2. P.W.16 took up the case for investigation. On 06.05.2000 at 12.30 a.m., he proceeded to the place of occurrence and prepared an observation mahazar in the presence of P.W.6 and another witness. He also prepared a rough sketch showing the place of occurrence. Then, he arranged for the photographer to take photograph of the place of occurrence and the dead body. P.W.8 took photographs. Then P.W.16 conducted inquest on the body of the deceased. He examined P.Ws.1 to 4 and few more witnesses during inquest. Then, he forwarded the body for postmortem. 3.3. P.W.9 ?. Dr.Jeyamani conducted autopsy on the body of the deceased on 06.05.2000 at 11.00 a.m. He found the following injuries: External Injuries:

1. 2 + x + cm bone deep lacerated injury on the right eyebrow.

2. 2 x s cm contusion on the right upper eye lid. On opening the head, sub scalpal and intra scalpal contusion seen over right Fronto Temporal region. The skull found fractured from the right side of the frontal bone to the right temporal bone 6 x 1 cm size. Subdural and sub arachnoid hemorrhage seen over right cerebral hemisphere. Laceration of brain over right fronto-temporal region 7 x 2 x 1 cm. He gave opinion that the deceased appeared to have died of shock and hemorrhage due to the above injuries. Ex.P9 is the Postmortem Certificate. 3.4. Continuing the investigation, P.W.16 examined few more witnesses and recovered personal belongings of the deceased found on the dead body. Then on 08.06.2000 at 6.00 a.m., he arrested A1, A2, A3 and A4 at Kanyakumari Gandhi Mandapam in the presence of P.W.7 and another witness. On such arrest, the first accused gave a voluntary confession, in which, he stated that he had hidden the stone behind the Mannaraja Temple. In pursuance of the said confession, he took the police and P.W.7 to the said place and produced the stone. On returning to the police station, P.W.16 forwarded the accused 1 to 4 for judicial remand. On 09.05.2000, he arrested the accused 5 and 11 at Vazhukkamparai Bus stop and forwarded them for judicial remand. He examined the Doctor and collected postmortem certificate. He examined all the relevant witnesses. Then, he handed over the case diary to his successor, namely, P.W.17 for investigation. P.W.17 continued the investigation and finally laid charge sheet against the accused on 22.06.2000. 3.5. Based on the above materials, the trial Court framed charges. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 17 witnesses were examined, 17 documents were exhibited and 9 material objects were marked. 3.6. Out of the said witnesses, P.Ws.1 to 4 are the eye witnesses, who have vividly spoken about the occurrence. P.W.1 has spoken about the complaint preferred by him also. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch by P.W.16 and the recovery of bloodstained earth and sample earth at the place of occurrence. P.W.7 has spoken about the arrest of the accused 1 to 4 by P.W.16 and the consequential discovery of the stone on the confession of the first accused. P.W.8 has spoken about the photographs taken by him. P.W.9 has spoken about the postmortem conducted. P.Ws.11 to 13 are not important witnesses, who are the police officials. P.W.14 has spoken about the handing over of FIR to the Court.

P.W.15 has spoken about the registration of the case. P.Ws.16 and 17 about the investigation done. 3.7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, they have examined one Robin Gnanasingh, the then Sub Inspector of Police and marked as many as three documents on their side. D.W.1, has spoken about the complaint preferred by one Gopalan, who is P.W.4 in the present case. Having considered the above materials, the trial Court acquitted all the accused. The State is aggrieved and the de-facto complainant is also aggrieved. That is how, they have come up with this appeal and revision respectively.

4. We have heard the learned counsel on either side and we have also perused the records carefully.

5. The learned Additional Public Prosecutor as well as the learned counsel for the Revision Petitioner would submit that the trial Court has not appreciated the evidences of P.Ws.1 to 4 in their proper perspective. They have categorically stated about the entire occurrence and without assigning sufficient reasons, the trial Court has acquitted the accused, the learned counsel contended. He would further submit that the motive for the occurrence has also been spoken by P.Ws.1 and 2. They would further submit that on the disclosure statement made by the first accused, a stone was recovered, which also further strengthens the case of the prosecution. They would further submit that the medical evidence duly corroborates the eye witness account. There is no delay in the FIR, which also further vouches for the truth of the allegations made against the accused. Thus, according to the State and the revision petitioner, the trial Court was not right in acquitting the accused.

6. But the learned counsel for the respondents 1 to 6 and the learned senior counsel for the respondents 7 to 12 would submit that the trial Court has given sound reasons for acquitting the accused. Though P.Ws.1 to 4 claimed to be the eye witnesses, the learned senior counsel would submit that they have not spoken the truth before the trial Court. The medical evidence also does not corroborate the eye witnesses account, he contended. They would further submit that the FIR is a concocted document. Therefore, according to the learned counsel, the trial

Court was right in acquitting the accused.

7. We have considered the above submissions.

8. At the outset, we should say that the presumption of innocence of the accused is implicit as a fundamental right forming part of fair procedure as guaranteed under Article 21 of the Constitution of India. The said presumption of innocence is further strengthened and even doubled when the trial Court records acquittal. In order to rebut the said presumption, the prosecution is expected to make out a very strong case leaving no doubt in the case of the prosecution.

9. Keeping in mind, the above said broad principle, let us now go into the facts of the present case. P.Ws.1 to 4 claimed to be the eye witnesses. Admittedly, the village festival was going on. The occurrence had taken place around 10.00 p.m., at the place where the festival was celebrated, where there was naturally a huge crowd of people. It is not clear in the case of the prosecution as to whether there was enough light available at the place of occurrence or not. Secondly, according to P.Ws.1 to 4, the people from the crowd started pelting stones. It is also in evidence of P.W.1 that he also in retaliation, pelted stones. When the prosecution party started running, it is alleged that the deceased alone was surrounded by the accused 1 to 5, in which, the first accused allegedly hit him with stone. This is highly unbelievable. When there were exchange of pelting of stones, the occurrence would not have happened as it is projected. When there was exchange of pelting of stones, one of the stones would have hit the deceased also. It is not as though the prosecution party did not pelt stones. It appears that there was a free for all, in which, the deceased had sustained one single injury and later died. It is the further case of the prosecution that P.Ws.1 and 2 tried to take him to the hospital. The accused physically prevented them. The trial Court has not believed this story also. Though there is only a single injury, as many as 12 people have been roped in. This shows that due to enmity, an attempt has been made to rope in as many as number of persons as possible. All these facts have been taken note of by the trial Court to come to the conclusion that it is doubtful that the occurrence had taken place in the manner, as it is projected by the prosecution. In our considered view too, the prosecution has not come forward with true version of

the occurrence. Therefore, it is difficult to hold any of the accused guilty.

10. Above all, it is the settled law that when there are two views, which are equally possible, it is not for this Court to substitute the view against the accused in the place of the view taken by the trial Court in their favour. We hold that there are lot of doubts in the case of the prosecution and thus, the prosecution has failed to prove the case beyond reasonable doubts. We do not find any perversity or illegality in the Judgment of the trial Court. We hold that the trial Court was right in acquitting the accused.

11. In the result, the criminal appeal and the criminal revision case are dismissed. The acquittal of the accused is confirmed. To 1.The Additional Sessions Judge, Nagercoil at Kanyakumari 2.The Additional Public Prosecutor Madurai Bench of Madras High Court, Madurai..

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