

State Represented By: Vs. 1.Ramesh

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Court : Chennai

Decided On : Aug-13-2015

Judge : S.Nagamuthu

Appellant : State Represented By:

Respondent : 1.Ramesh

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 CRIMINAL APPEAL (MD).No.144 of 2010 and CRIMINAL REVISION CASE(MD)No.43 of 2010 CrI.A(MD)No.144 of 2010: State represented by: The Inspector of Police, Shencottah Police Station, Tirunelveli District, Crime No.108/07 of Puliyarai Police Station. : Appellant/Complainant Vs. 1.Ramesh 2.Selvam 3.Alexandar 4.Manuvel 5.Manickam 6.Antony : Respondents/Accused PRAYER Appeal is filed under Section 378 of the Code of Criminal Procedure against the judgment dated, 26.06.2009 in S.C.No.496/2007 on the file of the learned I Additional Sessions Judge, Tirunelveli and convict the respondents/accused. !For Appellant : Mr.C.Ramesh,Additional Public Prosecutor ^For Respondents : Mr.P.Singaravel CrI.R.C(MD)No.43 of 2010 Madathi : Revision Petitioner/P.W.1 vs. 1.Ramesh 2.Selvam 3.Alexander 4.Manuvel 5.Manickam 6.Antony 7.State represented by, The Inspector of Police, Puliyarai Police Station, Cr.No.108/07, Tirunelveli District.

:Respondent/Complainant Prayer:Criminal Revision Case is filed under Section 397 and 401 of Code of Criminal Procedure against the judgment passed by the I Additional Sessions Judge, Tirunelveli in S.C.No.496 of 2007, dated 26.06.2009. For petitioner :Mr.K.Prabhu For R-1 to R-6 :Mr.P.Singaravel For R-7 :Mr.C.Ramesh Additional Public Prosecutor :COMMON

JUDGMENT

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JUDGMENT

OF THE COURT WAS MADE BY S.NAGAMUTHU, J) The State is the appellant in CrI.A(MD)No.144 of 2010. The respondents 1 to 6 therein are the accused in S.C.No.496 of 2007 on the file of the learned I Additional Sessions Judge, Tirunelveli. The trial Court framed as many as four charges against the accused. The first charge was against all the six accused under Section 148 I.P.C. The second charge was against accused Nos.2 & 4 alone under Section 323 I.P.C. The third charge was against the accused Nos.1,3, 5 and 6 under Section 302 r/w 34 I.P.C. The fourth charge was under Section 302 r/w 149 I.P.C against the accused Nos.2 and 4. By judgment dated 26.06.2009, the trial Court acquitted all the accused. Challenging the said acquittal, the State has come up with this Criminal Appeal.

2. The defacto complainant in this case Mrs.Madathi, challenging the said acquittal, has come up with CrI.R.C(MD).No.43 of 2010.

3. Since both these proceedings arise out of one single judgment, they were heard together and disposed of by this common judgment.

2. The case of the prosecution in brief is as follows: (i)The fourth accused is a resident of Pudu colony, Angankaladi, Therku Medu in Tirunelveli District. The accused Nos.5 and 6 are his sons. The first accused is the grandson of the fourth accused through his first daughter. The accused Nos.2 and 3 are the grandsons of the fourth accused through his second daughter. The fourth accused had yet another grandson by name vellaithurai. Mr.Vellaithurai was employed in the State of Kerala. The deceased in this case was one Mr.Chinnapichai. His two sons were

also employed in Kerala. Out of some quarrel between those two sons of the deceased and the grandson of the fourth accused, A-4's grandson Mr.Vellaithurai was murdered in Kerala on 22.05.2007. In the said murder case, the two sons of the deceased are the accused and one Isakki was yet another accused in this case. The dead body of the deceased Vellaithurai was brought to his native place (i.e) Angan Kaladi, Therku Medu. After the rituals, the dead body was cremated in the same village. (ii) It is alleged that at the time when the dead body was cremated, all the accused took a vow that they should kill the persons, who were responsible for the killing of Vellaithurai. It is stated to be the motive for the present occurrence. (iii) While so, on 26.05.2007, at 9.30 p.m., P.W1, the wife of the deceased and the deceased were in their house. P.W.2 is the brother of the deceased, who hails from a different village. According to the case of the prosecution, he had also come to the house of P.W.1. It is further alleged that at that time, all the six accused came in front of the house of the deceased. They forced the door open and entered into the house of the deceased. On finding P.W.1 inside the house, the fourth accused abused her and attacked her with wooden log on her back of the chest. The second accused attacked her with wooden log on the right hand. At that time, the deceased was there. On seeing him, the sixth accused shouted that the old man namely the deceased should be killed forthwith. On hearing the said inducement, the first accused cut the deceased with an aruval on his neck. Then, they dragged the deceased outside the house (ie) to the street. It is further alleged that on the street, the accused No.1 cut the deceased on the neck. The accused Nos.3, 5 and 6 cut him by inflicting one blow each. The deceased sustained injuries and fell in a pool of blood and breathed his last. P.W.1 had also sustained injuries. Therefore, P.W.1 went to the Government Headquarters Hospital at Tenkasi. (iv)P.W.4 ?. Dr.Krishnan examined P.W.1. At that time, P.W.1 told him that she was attacked by six known persons. On examination, he noticed a small abrasion on the foot of P.W.1. It was a simple injury. Ex.P4 is the accident register. (v) Before going to the hospital, P.W.1 went to Puliyarai Police Station. P.W.14, the then Sub-Inspector of Police attached to Puliyarai Police Station was on duty. P.W.1 made complaint under Ex.P1. P.W.14 registered a case in Crime No.108 of 2007 under Sections 147, 148, 448, 452, 323, 294(b), 109 and 302 of I.P.C. He forwarded P.W.1 to the hospital for

treatment. Then he forwarded Ex.P1 and the F.I.R to Court and handed over the case diary to the Inspector of Police for investigation. (vi)P.W.15 took up the case for investigation and proceeded to the place of occurrence. He prepared an observation mahazar and rough sketch in the presence of P.W.3 and another witness. Then he recovered bloodstained earth and sample earth from the place of occurrence under a mahazar and on the same day at 6.00 p.m., he conducted inquest on the dead body of the deceased in the hospital. Ex.P.20 is the inquest report. He examined P.Ws.1 to 3 and few more witnesses and recorded their statements. Then he forwarded the dead body for postmortem. (vii) P.W.6-Dr.Ramakrishnan, conducted autopsy on the body of the deceased. He found the following injuries: External injuries:

1. A Stab injury of 5 cm X5cm, upto rib depth, in between 6th & 7th rib on the right side. Fracture right 6th & 7th rib present.
- 2.A cut injury of size 10 cm X5cm over the dorsum of left wrist, cutting across 9th carpal bones.
- 3.An oblique cut injury of size 12 cm X5cm upto cervical vertebrae inter-vertebral space in C2-C3 rib. Fracture C2 Vertebrae and cut in the spinal card.
- 4.A cut injury of size 5 cm X5cm X5cm over the left shoulder.
- 5.A cut injury of size 10 cm X5cm upto muscle depth over the back of the right arm.
- 6.A cut injury of 10 cm X5m upto bone depth(NC)Head of right humerous on the right shoulder.
- 7.An Abrasion of 2 cm X2cm below right knee.
- 8.Heart 90 gm pale, empty. Lungs right 450 gm pale lacerated in the lower lobe. Liver 1700 gm pale. Kidney each 90 gm pale. Spleen 90 gm pale. No fracture Pelvis. Skull:About 300 ml of clotted blood seen below the skin of the scalp. An irregular fracture involving the Parreto-occipital function, right temporal left temporal bone. (since about 15 cm) About 200 ml of blood seen sub-durally. Stomach contains about 500 ml of undigested food particles & watery fluid. He gave opinion that the deceased would appear to have died of shock and hemorrhage due to injury to vital organs 12-14 hours prior to postmortem.

(viii)Continuing the investigation, P.W.15 arrested the sixth accused on 28.05.2007 at 8.00 a.m., near Kottaivasal Kovil. On such arrest, the sixth accused gave a voluntary confession in the presence of witnesses. In which, he disclosed the place, where he had hidden the weapons. In pursuance of the said disclosure statement, he took P.W.15 and witnesses to the said place and produced four aruvals and two wooden longs. P.W.15 recovered six material objects under a

mahazar and he forwarded the material objects to the Court. He made a request to Court to send the material objects for chemical examination. (ix) According to the chemical analysis report, in all the items, excluding the wooden log, human blood was noticed. But the result of the grouping of the blood stains on the billhooks was inconclusive. On completing the investigation on 06.06.2007, P.W.15 laid charge sheet against the accused.

3. Based on the above police report, the trial Court framed charges as detailed above and the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 21 documents were exhibited and 9 material objects were also marked. Out of the said witnesses, P.W.1 is an injured eye witness and P.W.2 is yet another eye witness. They have vividly spoken about the entire occurrence. P.W.3 is the son of P.W.2, who has spoken about the observation mahazar prepared and recovery of bloodstained earth and sample earth from the place of occurrence. P.W.4-Dr.Krishnan, has spoken about the treatment given to P.W.1 and P.W.5- Dr.Kulanthaivelu, has spoken about the fact that he declared the deceased dead, when he was brought to the hospital. P.W.6-Dr.Ramakrishnan, has spoken about the postmortem conducted by him and his final opinion. P.W.7 is an Assistant of the Court, who has spoken about forwarding of material objects for chemical examination. P.W.8, is an Official from Tamil Nadu Electricity Board, who has spoken about the fact that there was no electricity failure on the occurrence place. P.W.10 is the Village Administrative Officer, who has spoken about the fact that it was in his presence, the sixth accused was arrested on whose disclosure statement, four aruvals and two wooden logs were recovered. P.W.11, who was the then Head Constable and P.W.12, who was the Grade I constable, have spoken about carrying of the dead body for postmortem and other facts and they are not very important witnesses. P.W.13, who was the then Circle Inspector at Kulathupuzha Police Station in Kerala State, has stated that on 22.05.2007, Mr.Vellathurai was murdered, regarding which he has registered a case in Crime No.120 of 2007 at Kulathupuzha Police Station. He has further stated that in that case there were three accused and two of them are the sons of the deceased. P.W.14 has spoken about the registration of the case and P.W.15 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, but marked the accident register copy for P.W.1 as Ex.D.1. Having considered the above materials, the trial Court acquitted all the accused. Aggrieved over the same, the State is on appeal and the defacto complaint is before this Court by way of revision.

5. We have heard the learned Additional Public Prosecutor appearing for the State, the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents/accused and also perused the records carefully. 6. The learned Additional Public Prosecutor would submit that P.W.1 is an injured eye witness and her evidence ought not to have been rejected by the trial Court. He would further submit that the presence of P.W.2 cannot be doubted, because he had come after all to the house of the deceased, who happened to be his brother. Further, the evidence of P.Ws.1 and 2 are very cogent and convincing and therefore, the trial Court ought not to have rejected these two evidences. He would further submit that the medical evidence duly corroborates the eye witness account of P.Ws.1 and 2. He would further submit that on the arrest of the sixth accused, on his disclosure statement, four aruvals and two wooden logs were seized and those weapons contained human bloodstains. Thus, the said confession of A-6 is also relevant under Section 27 of the Evidence Act. The learned Additional Public Prosecutor would further submit that the motive for the occurrence has also been clearly established by examining P.W.13 by producing the connected records. Thus, learned Additional Public Prosecutor would further submit that by giving undue importance to some of the minor contradictions, the trial Court has rejected the case of the prosecution which according to the learned Additional Public Prosecutor, is not sustainable.

7. The learned counsel appearing for the revision petitioner would adopt the arguments of the learned Additional Public Prosecutor and also pray for reversal of the judgment.

8. The learned counsel appearing for the accused would oppose these two cases. According to him, the presence of P.Ws.1 and 2 cannot be believed. He would

further submit that there were material contradictions between the eye witness account and the medical evidence. He would further submit that the arrest of the sixth accused and the consequential recovery of weapons cannot be believed as there are lot of contradictions and improbabilities in the evidence of P.W.10, an another witness. The learned counsel would further submit that when the trial Court on appreciation of evidence, had come to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt, the same cannot be reversed unless there are sound grounds made out by the prosecution.

9. We have considered the above submissions. 10 .P.W.1 in this case claims to be an injured eye witness. If a person claims to be an injured in the same occurrence, the presence of the eye witness at the time of occurrence would stand established. Here, in this case, the question is whether P.W.1 has sustained injury in the very same occurrence or not. P.W.1 has stated that the second accused attacked her on the back and the fourth accused attacked on the hand with wooden log. But, there were no injuries fund on the back of the chest or on the hands. But, there was a small abrasion noticed by the Doctor on the foot of P.W.1. It is not the case of P.W.1 that any of these accused had attacked her on her foot. Thus, the small abrasion found on P.W.1 has not been proved that the same could have been sustained in the very same occurrence. Therefore, it cannot be held that P.W.1 is an injured eye witness. At the most, she can only be an ordinary eye witness as P.W.2. Now turning to the evidence of P.W.2, he is not a resident of that village as he belongs to a different village. His presence at that time was by chance. It is well settled law that when a person claims to have been present at the time of occurrence by chance, the reasons for his being present should be proved to the satisfaction of the Court. In this case, P.W.2 claims that he had come to the house of P.W.1 in a casual manner. This is to some extent highly unbelievable. Assuming that P.W.2 was also present along with P.W.1 in the house, the next immediate question that arises for consideration is as to whether their version is believable.

11. The trial Court had appreciated the evidence of these two witnesses and has come to the conclusion that these two witnesses are highly unbelievable. The first and foremost reason stated by the trial Court is that the medical evidence relating

to the injuries found on the deceased has not corroborated the eye witness account of P.Ws.1 and 2. The medical evidence, in fact, is not in consonance with the eye witness account of P.Ws.1 and 2. Yet another reason to doubt the evidence of P.Ws.1 and 2 is that P.Ws.1 and 2 have implicated almost all the male members of A4's family. As we have pointed out A-1 is the grandson through the first daughter of A- 4. A-2 and A-3 are the grandsons of A-4 through the second daughter and A-5 and A-6 are the sons of A-4. Thus, as rightly pointed out by the learned counsel for the accused, the entire menfolk in the family of A-4 have been arrayed as accused. P.Ws.1 and 2 are not only interested witnesses and related to the deceased, but they are also inimical towards the accused, because of the earlier murder occurred on 22.05.2007 in which A-4's grandson Vellaithurai was murdered by the two sons of the deceased. In those circumstances, their evidence require very close scrutiny. When that is done, as rightly submitted by the learned counsel for the accused, in our considered view, the trial Court was right in coming to the conclusion that their evidences are liable to be rejected. The first reason is that the medical evidence does not corroborate the eye witness account of P.Ws.1 and 2. Secondly, their evidence is highly dramatic and artificial. It is as though one after the other, the accused came on the stage and caused one single blow on the deceased and went away. When six people had gone there armed with dangerous weapons, going by the natural human conduct, one can expect that all of them would have mounted attack on the deceased simultaneously, in which case, P.W.1 would not have been in a position to speak about each injury on the deceased and overt act of each accused. But, in this case, in a very artificial manner P.Ws.1 and 2 have distributed one injury to each accused. This gives raise to a presumption under Section 114 of the Evidence Act, that the occurrence would not have happened in the manner spoken to by P.Ws.1 and 2. Considering all the above, for cogent reasons, the trial Court has acquitted all the accused.

12. Now, we have to recapitulate the law on the subject. The Honourable Supreme Court has been consistently holding that the presumption of innocence is implicit in the right to fair trial as guaranteed as a fundamental right under Article 21 of the Constitution of India. Such presumption of innocence is further strengthened and even doubled when the trial Court records acquittal of the accused. Unless it is established before the appellate Court in an appeal against acquittal that the

judgment of the trial Court suffers from perversity, illegality etc., it is not possible for the the appellate Court to reverse the judgment of acquittal recorded by the trial Court. In other words, assuming that there are two views which are equally possible, one in favour of the accused and the other in favour of the prosecution, the view taken by the trial Court in favour of the accused cannot be substituted by the view of the appellate Court in favour of the prosecution.

13. For all these legal as well as factual positions, we find that there is no merit in the appeal as well as in the revision warranting interference at the hands of this Court. We fully agree with the finding of the trial Court that the prosecution has failed to prove the charges against the accused beyond reasonable doubts.

14. In view of the foregoing conclusion, the Criminal Appeal(MD)No.144 of 2010 and Criminal Revision Case No.43 of 2010 are dismissed and the acquittal of the accused is hereby confirmed. To 1.The I Additional Sessions Judge, Tirunelveli. 2.The Inspector of Police, Shencottah Police Station, Tirunelveli District, Puliyarai Police Station 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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