

1.C.Samarraj Vs. State Through

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Court : Chennai

Decided On : Aug-24-2015

Judge : S.Nagamuthu

Appellant : 1.C.Samarraj

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

24. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.145 of 2015
1.C.Samarraj 2.C.Chandran 3.S.Asokan 4.S.Thangapandi 5.J.Mani
6.M.Selvendran 7.S.Prabu : Appellants/Accused Nos.1 to7 Vs. State through The Inspector of Police, Rajathani Police Station, Rajathani, Theni District, Crime No.177 of 2005. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 21.04.2015 made in S.C.No.1 of 2007, on the file of the Principal Sessions Judge, Theni. !For Appellant : Mr.V.Ganapathi Subramanian For Mr.B.Chandramohan ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, JJ. The appellants are the accused Nos.1 to 7 in S.C.No.1 of 2007, on the file of the learned Principal Sessions Judge, Theni. The Trial Court framed as many as seven charges as detailed below.

Charge	Accused	Penal Provisions
1	1 to 7	120(B) IPC
2	1 to 4	148 IPC
3	5 to 7	147 IPC
4	1 to 7	341 IPC
5	1 to 4	302 IPC
6	5 to 7	302 r/w 34 IPC
7	1 to 7	307 IPC

The respondent filed final report totally against nine accused, including these appellants. The accused Nos.8 and 9, by name, Mr.Jegan and Mr.Suman, were later on found to be juveniles and therefore, the case against them has been forwarded to the Juvenile Justice Board, where it has been tried as C.C.No.1 of 2009. Thus, these seven accused alone faced the trial. By Judgment dated 21.04.2015, the Trial Court convicted the accused Nos.1 to 7, as detailed below:-

Accused No.	Convicted under Sections	Sentence imposed	Fine amount
1	323 IPC	To undergo simple imprisonment for three months.	-
1 to 4	148 IPC, 341 IPC, 302 IPC	(i) To undergo simple imprisonment for one year; (ii) To undergo simple imprisonment for one month; (iii) To undergo imprisonment for life	-
5 to 7	147 IPC, 341 IPC, 302 r/w 34 IPC	(i) To undergo simple imprisonment for six months; (ii) To undergo simple imprisonment for one month; (iii) To undergo imprisonment for life	-

- - To pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellants have come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mr.M.Rasaiah. PW-1 and PW-2 are his sons and PW-3 is his wife. PW-3 and one Mrs.Chinnammal were sisters. Mrs.Chinnammal was given in marriage to the first accused. Thus, the deceased and the first accused are co-brothers. Twelve years before the occurrence, Mrs.Chinnammal, according to the case of the prosecution, accidentally, fell into a Well and died. From that time onwards, there was no cordial relationship between these two families.

2.1. Subsequently, there was a theft case registered on the file of the Rajathani Police Station against the first accused. The first accused was complaining that the deceased was instrumental for the registration of the said case against him. In the said theft case, the first accused was arrested by the police. Thereafter, the brother of the first

accused, by name, one Mr.Thangavelu developed quarrel with the deceased alleging that the deceased had alone instigated the police to arrest the first accused. While so, the said Mr.Thangavelu died. In respect of the same, a murder case was registered against the deceased, PW-2, PW-3 and two others. Thereafter, the motive between the two families became very stronger. 2.2. While so, on 25.05.2005, the deceased had gone to Chitharpatti Milk Depot for the purpose of selling milk. PW-1 and PW-2 accompanied the deceased to the said Milk Depot. After selling milk in the said depot, all the three were returning towards their house. While they were nearing the farm of one Mr.Kothapandian, suddenly, ten persons emerged, which includes these seven appellants and two juvenile accused. All of them surrounded the deceased and started attacking him. The first accused shouted at the deceased "go and die" and caused a single stab injury with soorikathi on his right side of the chest. Following him, the second accused caused a stab injury with soorikathi on the right side of the abdomen and another injury on the left side of the abdomen. Following him, the fourth accused stabbed the deceased on the left side of the hip with soorikathi. Following him, the juvenile accused, by name, Jegan, stabbed the deceased on the left side of the back of the chest with soorikathi. Following him, the third accused stabbed the deceased near his left thumb with soorikathi. And following him, the first accused pelted a stone on PW-1 and caused an injury on his head. Fearing for life, PW-1 and PW-2, namely the sons of the deceased, started running towards their house. The deceased fell down on the spot in a pool of blood. On returning to the house, PW-1 and PW-2 told PW-3 and the others about the occurrence. Soon thereafter, they rushed to the place of occurrence. But, the dead body was not found there. The dead body was found in a motor shed situated at a distance of 30 feet away from the place of occurrence. Then, PW-1 proceeded to the Rajathani Police Station and made a complaint. 2.3. One Mr.C.Muthiah, the then Sub-Inspector of Police, attached to the Rajathani Police Station, on receipt of the said complaint, registered a case in Crime No.177 of 2005, under Sections 147, 148, 341, 324, 307 and 302 of the Indian Penal Code, at 08.00 PM. EX-P1 is the complaint and EX-P21 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police. 2.4. Taking up the case for investigation, on 25.05.2005, at 11.30 PM, PW-13 proceeded to

the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-6 and another witness. Then, he recovered bloodstained earth and sample earth from the place of occurrence in the presence of the same witnesses. Then, he conducted autopsy on the body of the deceased between 01.00 AM and 03.00 AM, on 26.05.2005 and prepared an inquest report, under EX-P23. Then, he forwarded the dead body for postmortem. 2.5. PW-9, Dr.D.Balamurali, conducted autopsy on the body of the deceased, on 26.05.2005, at 07.30 AM. He found the following injuries:- "1. An oblique stab injury over the right side of antr.aspect of just just 6 cm below the ear lobule and 5 cm from the midline 2 X1cm size. Both ends are sharp and margins are regular. On dissection, there was a cut injury over right common carotid artery and internal jugula vein and right vagus nerve with surrounding haematoma about 8 X6cm in size.

2. An oblique stab injury just 2 cm below the injury No.1 2 X1X1cm in size. On dissection, there was a cut injury of right common carotid artery.

3. An oblique stab injury over right side of antr.abdominal wall 4 cm from the costal margin about 2 X1cm in size both ends are sharp and margins are regular. On dissection, it entered into the peritoneal cavity and a cut injury over lower pole antr.aspect of right kidney about 1 X1X1cm with surrounding contusion, there was a tear in the omentrum about 1 X1cm with surrounding haematoma present. Hemoperitoneum present.

4. An oblique stab injury over left side of antr.abdominal wall 2 cm below the costal margin about 2 X1X1CM with subcutaneous & muscle haematoma.

5. An oblique stab injury in right injuinal region about 2 X1X1cm in size with surrounding contusion.

6. An oblique stab injury in dorsum of right thumb 2 X1X1cm with exposure of bone and tendon.

7. An oblique stab injury parietal region of scalp 2 X1X1cm with surrounding contusion.

8. An oblique stab injury over frontal region of scalp 2 X1X1cm with subcutaneous contusion.
9. An oblique stab injury over right of back 4 cm from the lower margin of right scapula measuring 2 X1X1cm with surrounding contusion.
10. An oblique stab injury measuring 2 X1X1cm in left side of back 2 cm below the lower margin of left scapula with surrounding contusion". EX-P19 is the postmortem certificate. He gave opinion that the deceased would appear to have died of shock and hemorrhage due to injury to major blood vessels and nerve in the neck, vide injury Nos.1, 2 and 3, about 12 to 18 hours prior to the autopsy. 2.6. On 01.06.2005, PW-13 came to know that the accused Nos.1, 2, 4, 5 and juvenile accused - Mr.Jegan and Mr.Suman had surrendered before the learned Judicial Magistrate, Bodi, on 27.05.2005. On a request made by him, the jurisdictional Magistrate ordered for police custody of these accused. Accordingly, on 03.06.2005, he took custody of all the above six accused and brought them to the Police Station. On 04.06.2005, in the presence of PW-8 and another witness, the first accused gave a voluntary confession between 08.00 AM and 09.00 AM. On the same day, the other accused Nos.2, 4, 5 and the juvenile accused gave independent voluntary confessions. Then, the accused took PW-13 and PW-8 to a shed, situated at S.Kathari Narasingapuram from where the first accused took out a soorikathi and bloodstained Dhoti. The second accused produced a bloodstained soorikathi and bloodstained Dhoti. The fourth accused produced a bloodstained soorikathi and bloodstained Dhoti. The fifth accused produced a bloodstained shirt. The juvenile accused - Jegan produced a Dhoti and the juvenile accused Suman produced a Lungi. All these material objects were recovered under separate mahazers, vide EX-P3, EX-P6, EX-P8, EX-P10, EX-P12, EX-P14 and EX-P18. Then, PW-13 brought all these accused to the Police Station, forwarded them to the Court for judicial remand and handed over the material objects to the Court. 2.7. On 07.06.2005, he came to know that, on 30.05.2005 itself, the third accused had surrendered before the learned Judicial Magistrate No.I, Periyakulam and the sixth accused had surrendered before the learned Judicial Magistrate No.II, Madurai. PW-13 took police custody of these two accused on the orders of the jurisdictional Magistrate on 03.06.2005. In the

presence of PW-8, while in custody, these two accused gave independent voluntary confessions, in which they disclosed the place, where they had hidden bloodstained cloths. In pursuance of the same, the second accused took PW-13 and another witness to the farm, belonging to one Mr. Balusamy Thevar and produced soorikathi and the same was recovered under a mahazer. The sixth accused produced a Lungi, which was also recovered under a mahazer. Then, PW-13 returned to the Police Station along with the accused and forwarded them to the Court for judicial remand. He handed over the material objects to the Court.

2.8. On 02.06.2005, the seventh accused had surrendered before the learned Judicial Magistrate No.1, Aruppukottai. PW-13 took police custody of the seventh accused on the orders of the jurisdictional Magistrate. On 04.06.2005, in the presence of PW-8 and another witness, he gave a voluntary confession, in which he disclosed the place, where he had hidden soorikathi. In pursuance of the same, he took PW-13 and PW-8 to the farm, belonging to one Mr. Balusamy Thevar and produced soorikathi from the hide out, which was recovered under a mahazer. On returning to the Police Station, PW-13 forwarded the accused to the Court for judicial remand. Then, he made a request to the Court to forward all the material objects for chemical examination. The report revealed that there was human blood found on all the properties, including the soorikathi recovered at the instance of the accused. On completing the investigation, he laid charge sheet against the accused.

2.9. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, 13 witnesses were examined, 26 documents and 18 material objects were marked. Out of the said 13 witnesses, PW-1 and PW-2 claimed to be eye-witnesses. They have vividly spoken about the entire occurrence, including the overt acts of each accused, the details of the injuries caused on the deceased as well as the weapons used by each accused. PW-3, the wife of the deceased, has spoken about the motive. She has also stated that the deceased was done to death by the family members of the accused. PW-4 has also spoken about the motive. 2.10. PW-5 is the brother of PW-3. He has stated that the accused were seen moving near the place of occurrence by him. PW-6 has spoken about the preparation of observation mahazer, the rough sketch, the recovery of

bloodstained earth and sample earth from the place of occurrence. PW-7 has turned hostile and he has not supported the case of the prosecution in any manner. PW-8 has spoken about the recovery of the material objects from the accused as narrated hereinabove. PW-9, Dr.D.Balamurali has spoken about the autopsy conducted by him and his final opinion regarding the cause of death of the deceased. PW-10 is the Sub-Inspector of Police, attached to the Rajathani Police Station, who has stated that he took the dead body to the hospital for postmortem. PW-11 is the sister of the deceased, who has spoken about the conspiracy. PW-12 has also spoken about the conspiracy. [These two witnesses have been disbelieved by the Trial Court].. PW-13 is the Inspector of Police, who has spoken about the investigation done by him. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with this Criminal Appeal.

3. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned counsel for the appellants would submit that PW-1 and PW-2 would not have been present at the time of occurrence. He would further submit that the narration of the entire occurrence by PW-1 and PW-2, such as, overt acts of each accused, the details of the injuries caused on the deceased as well as the weapons used by each accused, would go to show that there is no truth in their evidences. The learned counsel would further submit that the entire family of the accused have been roped in in this case with a view to wreck vengeance. He would further submit that the family members of the deceased were all accused in the murder case relating to the murder of one Mr.Thangavelu. The learned counsel would further submit that no independent witness has been examined. Thus, according to the learned counsel, the entire case of the prosecution is liable to be rejected.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, there is no reason to reject the evidences of PW-1 and PW-2, who are eye-witnesses to the occurrence, more particularly, PW-1 is an injured eye-witness. He would submit that PW-1 and PW-2 have spoken about the entire occurrence in a vivid manner and their evidences are cogent and convincing. He would further submit that the medical evidence also duly corroborates the eye-witness account of PW-1 and PW-2. He would further submit that PW-3 and PW-4 have spoken about the motive. The recovery of the material objects at the instance of the accused would also lend assurance to the case of the prosecution, he contended. Thus, according to the learned Additional Public Prosecutor, the Trial Court was right in convicting these accused, which does not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. So far as the motive is concerned, it is not disputed by the accused. It is the admitted case that in connection with the alleged murder of the brother of the first accused, there was a murder case, in which PW-1 to PW-3, PW-5 and few others were the accused. There was a long standing enmity between these two families. Thus, the motive has been clearly established. But, at the same time, it needs to be mentioned that the motive is a double edged weapon. According to the learned counsel for the appellants, because of this motive, an attempt has been made to rope in the entire family members of the accused falsely, whereas according to the case of the prosecution, it is because of this motive, the deceased was done to death by all these accused.

8. With this background, let us further consider the evidences of PW-1 and PW-2. The house of PW-1 and PW-2 is not anywhere near the place of occurrence. The deceased had gone to Chitharpatti Village to sell milk in the Milk Depot. The occurrence had taken place while he was returning to his house. According to PW-1 and PW-2, they also went along with the deceased and they were returning with him. Thus, according to them, their presence at the time of occurrence, is purely by chance. It is too well settled that if a witness claims to be present at the place of occurrence by chance, it is necessary that the reason for his presence at the place

of occurrence, by chance, should be explained to the satisfaction of the Court.

9. In this case, the explanation offered by PW-1 and PW-2 is that they accompanied the deceased for the purpose of selling milk to the Milk Depot. But, no material has been collected during investigation and proved in evidence during trial that all the three had come to the Milk Depot, as it is claimed by PW-1 and PW-2. The prosecution has not examined any witness from the Milk Depot. Similarly, the prosecution has not examined any witness, who has seen these three coming together towards their house. Likewise, there would have been entry made in the appropriate register maintained in the Milk Depot if really the deceased had gone there to sell milk. No such document has also been recovered by the police.

10. From these circumstances, in our considered view, the explanation offered by PW-1 and PW-2 for their presence at the crucial moment at the place of occurrence is difficult to be believed.

11. Then, comes the actual occurrence. According to PW-1 and PW-2, all the nine accused attacked the deceased. Both the witnesses have deposed, in a parrot like manner, giving minute details of the occurrence. They have vividly spoken about the overt acts of each accused, the details of the injuries caused on the deceased as well as the weapons used by each accused. A reading of the evidences of PW-1 and PW-2 would go to show as though the first accused attacked once on the deceased, followed by the second accused, followed by the fourth accused, followed by the juvenile accused, followed by the seventh accused and followed by the third accused. This narration itself would go to show that it is highly artificial and unnatural. The occurrence would not have taken in such a fashion. When a group of people, with common object, that too, all armed with weapons, with strong motive in their minds, to kill the deceased had gathered, quite naturally, attack would have been mounted by all the accused more or less simultaneously. It is not believable that the attack would have been made one after the other in a line by all the accused. Had it happened in such a fashion, PW-1 and PW-2 would not have been in a position to meticulously notice each injury caused by each accused. In our considered view, the narration of the alleged attacks made by the

accused, the order of attack made and the overt acts attributed would go to show that the evidences of PW-1 and PW-2 are highly artificial in nature. This dramatic narration of the occurrence by PW-1 and PW-2 makes their evidences highly unbelievable.

12. Next comes the conduct of PW-1 and PW-2. Had it been true that they were along with the deceased, certainly, the accused would have attacked them also. Of course, it is alleged that the first accused pelted a stone on PW-1 and he sustained a small injury on his head. When the first accused had a soorikathi in his hand, it is doubtful whether he would have taken a stone and attacked PW-1, without using the soorikathi. Further, when PW-1 and PW-2, on seeing their father being attacked by the accused, going by the natural human conduct, would have raised hue and cry seeking help and they would have gone to the rescue of the deceased or they would have, at least, run away out of fear seeking help from the others. Their evidences would go to show as if they were standing there, witnessing the entire occurrence until the last cut was made and then, they went away from the place of occurrence. This, in our considered view, is highly unbelievable.

13. According to PW-1 and PW-2, after returning home, they took PW-3 and the others to the place of occurrence. At the place of occurrence, the dead body was not found. The dead body was found in a motor shed. In the above background, we have to say that since PW-1 and PW-2 are highly interested in the case of the prosecution, enimical towards the accused and they are also chance witnesses, they should pass the test of close scrutiny. But, in our considered view, they have not passed the said test for the improbabilities and the inconsistencies, which we have discussed hereinabove. Therefore, as rightly pointed out by the learned counsel for the appellants, the materials available on record clearly would go to show that an attempt has been made by PW-1 and PW-2 to rope in as many number of the enemies as the accused in the case so as to take revenge on them. It may be true that some of the accused would have caused the death of the deceased. But, from the evidences available, it is not possible for this Court to separate the grain from the chaff. Therefore, we are bound to give the benefit of doubt to the accused and to acquit them. We hold that the prosecution has failed

to prove the case beyond reasonable doubts.

14. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellants, by Judgment dated 21.04.2015, made in S.C.No.1 of 2007, on the file of the learned Principal Sessions Judge, Theni, is set aside and the appellants are acquitted of all charges. Fine amount, if any, paid by the appellants shall be refunded to them. To 1.The Inspector of Police, Rajathani Police Station, Rajathani, Theni District. 2.The Principal Sessions Judge, Theni. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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