

1.Raghunesan Vs. State Rep. by The

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Court : Chennai

Decided On : Aug-21-2015

Judge : S.Nagamuthu

Appellant : 1.Raghunesan

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.198 of 2014 and CrI.A(MD)No.177 of 2015 1.Raghunesan 2.Rajagopal .. Appellants in CrI.A.(MD).No.198/2014 / Accused Nos.2 & 3 A.Jeyarooban @ Mavu .. Appellant in CrI.A.(MD).No.177/2015 / Accused No.4 Vs. State rep. by the Inspector of Police, K.K.Nagar Police Station, Tiruchirapalli District. (Crime No.422 of 2009) .. Respondent/ Complainant COMMON PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 13.12.2013, made in S.C.No.159 of 2010, by the learned I-Additional District Judge (PCR), Tiruchirapalli. !For appellant in CrI.A.(MD).No.198/2014 : Mr.S.Deenadayalan For appellant in CrI.A.(MD).No.177/2015 : Mr.N.Jeyakumar ^For respondent in both the appeals : Mr.C.Ramesh, Additional Public Prosecutor :COMMON

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) Since these two Criminal Appeals arise out of a Common Judgment, they were heard together and they are disposed of by means of this Common Judgment. 2.The appellants in Crl.A.(MD).No.198 of 2014 are the accused Nos.2 & 3 and the appellant in Crl.A.(MD).No.177 of 2015 is the accused No.4 in S.C.No.159 of 2010 on the file of the I-Additional District Judge (PCR), Tiruchirapalli. The first accused is absconding and he did not face the trial in full and therefore, the case against him was split up. The trial Court framed as many as three charges. The first charge was against the first accused under Section 302 IPC. The second charge was against the accused 2 to 4 under Section 109 r/w 302 IPC. The third charge was against the accused 2 to 4 under Section 302 r/w 34 IPC. By judgment dated 30.04.2014, the trial Court has acquitted the appellants / accused 2 to 4 from the charge under Section 109 r/w 302 IPC, but convicted them under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the accused 2 to 4 are before this Court with these appeals.

3. The case of the prosecution in brief is as follows; (a)The deceased in this case was one Mr.Sahayaseelan. PW1 is his wife. PW2 is the sister of the deceased. PWs.3 & 4 are the brothers-in-law of the deceased. The deceased and PWs.1 & 2 were all residing at E.14 Refugee Camp at Valavanthankottai, Tiruchirapalli District. PWs.3 & 4 were residing at Thiruvathavur Refugee Camp in Madurai District. The accused were all residing at Kottapattu Refugee Camp in Tiruchirapalli District. It is alleged that one Mr.Iyyan, a refugee, staying at Kottapattu Refugee Camp passed away on 04.10.2009. In order to attend the funeral ceremony, PWs.1 to 4, who are the relatives of Iyyan, had come together, along with the deceased, to Kottapattu Refugee Camp on 05.10.2009. On the same day, at 2.00 p.m., the funeral procession started. In the said procession, the deceased, PWs.1 to 4 and the first accused and few others participated. When the procession was progressing, there arose a quarrel between the deceased and the first accused. In that, it is alleged that the deceased attacked the first accused. This is stated to be the motive for the occurrence. (b) After the above incident, all of them returned to Iyyan house at Kottapattu. Around 6.40 p.m., the first accused

came to the said place and shouted at the deceased, referring to the attack made on him by the deceased earlier. The deceased came out of the house and told the first accused that the said issue was over long before and why should he come again to develop quarrel. During this quarrel, it is alleged that all the four accused participated. Then, the accused 2 to 4 caught hold the deceased and the first accused stabbed him twice with knife. The deceased fell down sustaining injuries. All the accused, then, fled away from the scene of occurrence. (c) Then, PW1 and others took the deceased to the Government Hospital at Tiruchirapalli. Dr. Rajasekaran ?. PW9 examined the deceased at the Government Hospital, Tiruchirapalli, on 05.10.2009 at 7.30 p.m. and on examination, he declared him dead and recorded the same in the Accident Register (Ex.P5). Then, he forwarded the body to the mortuary. PW1 went to the Police Station to make a complaint regarding the occurrence. PW11 - the then Sub Inspector of Police, attached to K.K.Nagar Police Station, Tiruchirapalli, received the complaint (Ex.P1) from PW1 on 05.10.2009 at 9.30 p.m. and registered a case in Crime No.422 of 2009 under Section 302 IPC. Ex.P8 is the FIR. He forwarded Exs.P1 & P8 to the Court. The records reveal that these documents have been received by the learned Magistrate at 9.00 a.m. on 06.10.2009. PW11, then, handed over the Case Diary to the Inspector of Police for investigation. (d) On 05.10.2009 at 10.00 p.m. PW12 ?. the then Inspector of Police took up the case for investigation, proceeded to the place of occurrence and prepared an observation and a rough sketch in the presence of witnesses. He conducted inquest on the body of the deceased and then, forwarded the body for postmortem. PW10 - Dr. Renuka Devi, a tutor in the Government Medical College Hospital, Tiruchirapalli, conducted autopsy on the body of the deceased on 06.10.2009 at 12.45 p.m. She found the following injuries: ? 1. An oblique stab wound, 4 cm x 1 cm x cavity deep, on the front of left side of the chest. O/E the edges are regular. The upper end is broader and the lower end is sharp. O/D the inter costal muscles, blood vessels and nerves are clean cut. On further dissection:- Pericardial tear present. A vertical stab wound, 3 cm x 1 cm x 1 cm, on the front of left ventricle present. Pleural tear present. A stab wound, 3 cm x 1 cm x 1 cm, on the upper lobe of left lung. Left lung collapsed. Pleural cavity contains fluid blood and clotted blood. 2. An oblique stab wound, 3 cm x 1 cm x bone deep, on the back of left side of the chest. O/E the edges are

regular. The upper end is broader and the lower end is sharp.?. Ex.P7 is the Postmortem Certificate. She gave opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries. (e) Continuing the investigation, PW12 arrested all the four accused on 06.10.2009 at 3.30 p.m. at TVS Tollgate, Tiruchirapalli, in the presence of PW8 and another witness. On such arrest, the first accused gave a voluntary confession in which he disclosed the place where he had hidden the knife. In pursuance of the said disclosure statement, he took PW13 and witnesses to the said place and produced the knife (MO.1). PW12 recovered the same under mahazar. Then, he forwarded the accused to the Court for judicial remand. Since he was transferred, he handed over the case diary to his successor (PW13). PW13 took up the case for investigation on 08.11.2009, collected the medical records, examined few more witnesses and finally, laid charge sheet against the accused. (f) Based on the above materials, the trial Court framed the charges as detailed in the second paragraph of this judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 16 documents and 6 material objects were marked. (g) Out of the said witnesses, PWs.1 to 4 are the eyewitnesses, who have vividly spoken about the entire occurrence. PW5 has spoken only about the hearsay information and thus, his evidence is not useful for the prosecution in any manner. PW6 has spoken about the observation mahazar. PW7 has turned hostile and he has not supported the case of the prosecution in any manner. PW8 has spoken about the arrest of the accused, confession given by the first accused and consequential recovery of MO.1. PW9 has spoken about the fact that he examined the deceased and declared him dead on 05.10.2009 at 7.30 p.m. PW10 has spoken about the postmortem conducted and the final opinion given by her. PW11 has spoken about the registration of the case. PWs.12 & 13 have spoken about the investigation done. (h) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the appellants/accused 2 to 4 denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. (i) Having considered all the above materials, the trial Court convicted these appellants/accused 2 to 4 under Section 302 r/w 34 IPC and accordingly, punished them. That is how they are before this Court with these appeals. 3.We

have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully. 4. The learned counsel appearing for the appellants/accused 2 to 4 would submit that there is delay in registering the FIR and in despatching the same to the learned Magistrate. According to the learned counsel, though the place of the occurrence, the Police Station and the Magistrate Court are within the radius of one kilometre, the FIR in this case was registered at 9.30 p.m. on 05.10.2009 and the same was reached at the hands of the learned Magistrate at 9.00 a.m. on 06.10.2009. Absolutely, there is explanation for the said delay. According to the learned counsel, this creates doubt in the case of the prosecution. The learned counsel would next contend that the presence of PWs.1 to 4, at the scene of occurrence, is also doubtful. According to the learned counsel, since they were residing elsewhere in two different camps, there would have been no occasion for them at all to even present at the time of occurrence. He would further submit that PW1, during cross examination, would state that when she was inside the house, the occurrence was taken place just outside. Therefore, according to the learned counsel, PW1 would not have witnessed the occurrence. 5. The learned counsel for the appellants would further submit that though it is claimed that the accused were arrested on 06.10.2009 at 3.30 p.m., PW1 has, during cross examination, stated that on 06.10.2009, when she made complaint to the Police, the accused were already in the custody. He would further submit that PW1 has stated that within fifteen minutes of the occurrence, the Police arrived at the scene of occurrence and they only took PW1 to the Police Station. All these facts, according to the learned counsel, would go to show that the entire case of the prosecution cannot be believed. He would further submit that assuming that these accused were present, that would not automatically prove that they had shared their common intention with the first accused to commit murder of the deceased. Thus, according to the learned counsel, the appellants/accused 2 to 4 are entitled for acquittal. 6. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, the presence of PWs.1 to 4 is quite natural and there is no reason to reject their evidences. He would further submit that they have given evidence in very cogent and convincing manner and their evidences are duly corroborated by the medical evidence also.

He would lastly submit that though the constable, who carried the FIR from the Police Station to the house of the learned Magistrate, has not been examined and though there is delay in despatching the FIR, on that score, the entire case of the prosecution cannot be doubted, he contended. Therefore, according to him, the judgment of the trial Court does not warrant any interference at the hands of this Court. 7. We have considered the above submissions. Even according to the case of the prosecution, the alleged occurrence was at 6.40 p.m. Admittedly, K.K.Nagar Police Station is situated just in front of the place of the occurrence. The house of the learned Magistrate is situated less than half or one kilometre from the Police Station. Had it been true that the occurrence was at 6.40 p.m., there would not have been any hindrance to either PW1 or PWs. 2 to 4 to rush to the Police Station to make the complaint. In this regard, we may refer to the evidence of PW1, wherein, during cross examination, she has admitted that within 15 minutes of the occurrence, the Police from K.K.Nagar Police Station had arrived at the scene of occurrence. This part of the evidence of PW1 must be true, because the Police Station is situated just by the side of the place of occurrence. PW1 has further stated that she was taken to the Police Station immediately by the Police. Then, at-least from 7.00 p.m. PW1 could have been in the Police Station, but the complaint came to be registered only at 9.30 p.m. PW1 has further stated that there was no enmity between these appellants/accused 2 to 4 and the deceased previously, and that she did not know the accused and after the incident alone, she came to know the name of the accused. She has admitted during cross examination that the accused were in the custody of the Police on that day night itself. In those circumstances, the delay of nearly two and half hours in giving the complaint assumes importance.

8. Next comes the delay in despatching the FIR. The FIR is stated to have been registered at 9.30 p.m., but, admittedly, the same has reached the hands of the learned Magistrate only at 9.00 a.m. on the next day. Thus, there is delay of 12 hours. But, the fact remains that the house of the learned Magistrate is situated very near to the Police Station, roughly within about half or one kilometre. But, still there is delay of 12 hours, which has not been explained away by the prosecution. The Police constable, who took the FIR from the Police Station to the house of the learned Magistrate, has not been examined. Thus, absolutely there is no

explanation for this delay.

9. In this backdrop, we are not prepared to say that only on the ground of delay, the entire case of the prosecution should be rejected. But, we should say that when there are multiple number of accused, the delay assumes importance, because there is no check on the prosecution, who can implicate any number of persons falsely using the delay. In this case, since we have got doubt about the FIR, we have to carefully scrutinise the evidences of PWs.1 to 4. Of-course, the learned Additional Public Prosecutor was right in saying that the presence of PWs.1 to 4 is quite natural. We are in full agreement with the same. But, now, the question is whether PWs.1 to 4, who were present at the time of occurrence, have told the truth or not. It is stated by PWs.1 to 4 that these appellants/accused 2 to 4 caught hold the deceased and the first accused stabbed the deceased. Going by the nature of the injury caused by the first accused on the deceased, we are of the view that it is quite improbable that these accused would have caught the deceased hold so as to facilitate the first accused to cause the stab injuries. Thus, going by all the above facts and circumstances, we are of the view that the prosecution has failed to prove the participation of these appellants/accused 2 to 4 in the commission of the crime by the first accused.

10. Whether the first accused, actually, stabbed the deceased and whether he has committed any offence or not is a matter to be decided by the trial Court when the trial against the first accused is completed. We do not want to express any opinion regarding the same as it would be beyond the scope of these appeals and we are concerned only with the case of these appellants/accused 2 to 4. Therefore, we make it very clear that any of the observations, which we have made in this judgment, are only for the purpose of these appeals and the same should not influence the trial Court, when the trial of the first accused is taken up. We hold that the prosecution has failed to prove the case against these appellants/accused 2 to 4 alone and hence, these appellants/accused 2 to 4 are entitled for acquittal.

11. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/accused 2 to 4 is set aside and they are acquitted. The fine amount paid, if any, shall be refunded to them. It is reported

that the appellants are in prison. Therefore, they are directed to be released forthwith, unless their detention is required in connection with any other case. To 1.The I-Additional District Judge (PCR), Tiruchirapalli. 2.The Inspector of Police, K.K.Nagar Police Station, Tiruchirapalli District.. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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