

Chinnakani Vs. Sivanadimai and Others

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Court : Chennai

Decided On : Feb-14-1995

Reported in : 1995CriLJ3138

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Crl.R.C. 481/92 and Crl.R.P. No. 474/92

Appellant : Chinnakani

Respondent : Sivanadimai and Others

Advocate for Def. : K. Sridhar, Adv. for ;K. Murugan, Adv.

Advocate for Pet/Ap. : A.E. Chelliah, Senior Counsel for ;G. Saravanan, Adv.

Judgement :

ORDER

1. This private Revision is against the order of acquittal passed by the learned Additional Sessions Judge, Tirunelveli in S.C. No. 377 of 1991 for the offences punishable under Section 302, read with Section 34, I.P.C.

2. The occurrence took place on 22-5-1990 at about 7 P.M. in Vairavikinaru Village. The prosecution case is that the deceased Suyambulingam and his wife PW-1 came to the shop of one Perumal Nadar to purchase articles required for

their daily use and thereafter, they went to the shop of PW-3 for purchasing some more articles and thereafter when they were returning to their house, the accused/respondents questioned the deceased Suyambulingam as to how he had arranged for exhibiting a Video film in the Street, for which, the deceased answered that he need not ask the permission of anybody and in the word quarrel, the respondents/accused cut the deceased with Aruval and knife causing fatal injuries and PW-1 and others when took him to the hospital at Nagercoil he succumbed to the injuries. Thereafter, on the message sent from the Hospital to the Police Station, PW-10. recorded the statement Ex. P.10 from PW-1 and investigation started. PW-15 examined the injuries on the deceased in the Headquarters hospital at Nagercoil and PW-14 did the post mortem. PWs. 1 to 4 were examined as eye witnesses to the occurrence, of whom, PW-2 turned hostile. The learned Additional Sessions Judge on going through the evidence of these witnesses has found that the prosecution has not established the guilt of the accused beyond reasonable doubt as the evidence of the eye witnesses created a doubt in his mind and therefore acquitted the accused.

3. Learned Senior Counsel appearing for the Revision Petitioner Mr. A. C. Chellaiah submits that the learned Additional Sessions Judge has not properly appreciated the evidence of the prosecution witnesses, that the ocular evidence in this case is sufficient to establish the guilt of the accused, but the Court below without giving proper weight to the evidence of the eye-witnesses has given more credence to the opinion evidence of the Doctor PW-14, for the acquittal of the accused persons and further for the failure on the part of the Police Officers in not producing the FIR given by the accused persons, the learned Sessions Judge ought not to have given importance entertaining suspicion about the prosecution case leading to the acquittal of the accused persons.

4. Learned Counsel for the Revision Petitioner refers to the evidence of the three eye-witnesses PWs 1, 3 and 4 who, according to him, have cogently narrated the occurrence and the high handed action of the accused persons using the lethal weapons against the deceased in causing fourteen cut injuries, of which, the head injuries were fatal and the Court below was not justified in rejecting the testimony of these three witnesses and according to the learned counsel, the reasons given

by the lower Court for rejecting the testimony of these witnesses is unacceptable and therefore the order of the acquittal is to be set aside. He also submitted that though the FIR given by the first accused was not produced by the prosecution, this document is available in the Magistrate Court and the learned Additional Sessions Judge could have summoned this document for his perusal and therefore the Court below was not right in commenting upon the non production of the FIR given by the accused persons. The learned Sessions Judge has given certain reasons for not accepting the prosecution case and according to the learned Sessions Judge the evidence placed by the prosecution before him had created considerable doubt in his mind as to the crime alleged against the accused persons and that, the evidence discloses that the deceased was the aggressor for this occurrence and therefore the accused had the right of private defence. So taking into consideration of the suspicious circumstances, he gave the benefit of doubt to the accused for their acquittal. Now, I shall refer to the doubts entertained by the Sessions Judge for not accepting the prosecution case. According to the learned Sessions Judge, even though Ex. P.10. is said to be the earliest statement recorded from PW-1 in the Hospital on 22-5-1990 itself, this document was not shown to PW-1, the author of the statement; but PW-10, the Head Constable alone has spoken in his evidence that he recorded Ex. P.10. from PW-1 and this circumstance created a doubt in his mind whether Ex. P.10. could have been the earliest statement recorded from PW-1.

5. On the other hand, it was urged for the Revision Petitioner that there is no other contraversion on the side of the accused, that any other statement was given by PW-1 and therefore, the evidence of PW-10 that Ex. P.10 is the earliest statement of PW-1 has to be accepted. It is true from the evidence of PW-1 and PW-10 that a statement seems to have been recorded from PW-1 in the Hospital. But PW-1 should identify the statement given by her. Ex. P10 is the statement produced before the Court and it was the duty of the prosecution to elicit from PW-1 as to Ex. P10 was the statement given by her. But Ex. P.10 was not shown to her, though, later, PW-10 would say that he recorded Ex. P.10 from PW-1. There was no reason for the prosecution for not showing Ex. P.10 to PW-1 to accept that this was the statement given by PW-1. Unless PW-1 admits that Ex. P.10 is the statement given by her naturally, a doubt had arisen in the mind of the Court as to

whether Ex. P.10 could have been the statement given by PW-1 even though she might have given a statement on 22-5-1990 itself. There is one other circumstance, which, we cannot fail to take note in this connection. The deceased Suyambulingam had fourteen cuts all over his body and therefore there must have been bleeding profusely. It is the evidence of PW-1 that all along she was with her husband/deceased till he was admitted in the hospital. The normal conduct of a wife would be to hold the body of the husband or at least to assist him when he fell down on the ground with bleeding injuries. A stranger may not go near a person who was subjected to the fatal attack, but a wife cannot remain like that and in this case, according to PW-1 she accompanied the deceased even from the shop of PW-3 before the attack. Therefore, if she was with him at the time of the attack, should have either intervened to protect her husband or at least after the fatal attack, when he fell down, she should have rushed up to lift him or helped him in some manner. The accused also had ran away with their weapons after causing the injuries on the deceased. Therefore, naturally PW-1 would not have hesitated to touch the body of her husband or lift him and in that process, there must be blood stains in her cloth or body. But PW-1 in her evidence would state that there was no blood stains in her body or saree. This circumstance has created a suspicion in the mind of the learned Sessions Judge as to whether PW-1 could have been in the place of occurrence when her husband was attacked. Even though, it was argued for the Revision Petitioner that there is no reason to reject the testimony of PW-1 this circumstance, which I referred to above, is a circumstance to suspect her presence in the place of occurrence.

6. Yet another circumstance referred to by the Court below is, that, though the first accused had given a complaint in Kudankulam immediately after the occurrence and a case was also registered by the Police, the complaint and the FIR were not produced before the Court. It was argued before me that for the fault on the part of the Police Officer in not producing this document before the Court, the Court cannot take a prejudicial view that the prosecution case is not true. He also argued that the learned Sessions Judge himself would have summoned this document for his perusal and without doing that he cannot take a stand that it is a suspicious circumstance in the prosecution case. When the prosecution alleges that these accused persons were the aggressors and caused the fatal injuries on the

deceased, to support the prosecution case, every document relating to this occurrence should have been placed before the Court. The accused also had sustained injuries and they had given complaint in the Police Station for the injuries sustained by them and they were also sent for treatment from PW-15. PW-15 has found that the second accused had sustained grievous injuries at 7 P.M. on the same day. Therefore, it was the duty of the prosecution to produce the statement of the A.1 to show the entire picture from the version of the accused as well as the complainant to find out the truth by the Court. It is not for the Court to summon a document, which was not placed before the Court, No doubt in exceptional circumstances to find out the truth, the Court may take steps suo motu to collect and gather evidence. But, in this case as the document was in the custody of the prosecution, but it failed to produce the same, naturally, the Court cannot view it lightly or ignore it. Therefore, the learned Sessions Judge took this aspect also as a suspicious circumstances.

7. The last and the most important important circumstance relied upon by the learned Sessions Judge is the injury on the deceased person. The head injury found on the deceased had caused fracture of the skull bone and it had penetrated into the brain causing damage to the brain as found by PW-14. The prosecution case is that the first accused with aruval in his hand cut the deceased on his head causing the head injury. Evidence of PW-1 and also PW-3 is that the first accused aimed the deceased on his head and the first cut was only on the head and this was followed by the successive cuts on the other parts of the body and ultimately he fell down. PW-14. the post mortem Doctor in his evidence has given his opinion that as the cut on the head had damaged the brain, the deceased would have lost conscience, soon after this injury and thereafter, he could not have used any weapon to attack anybody. If this opinion of the Doctor is accepted, the accused would not have sustained injuries after the head injury sustained by the deceased. It is to be borne in mind that all the eye-witnesses to the occurrence have admitted that the deceased with a knife in his hand had slashed it when he was attacked and he caused injuries to both the accused. Therefore the prosecution has admitted that the injuries on the accused persons were caused only by the deceased. Now, if the evidence of PW-14, the doctor is taken into consideration, the deceased could not have caused any injury to the accused persons, after he

sustained the head injury. Therefore, it goes without saying that before the head injury, he should have attacked the accused persons with a knife in his hand. But the evidence of the eye-witnesses is to the effect that only after the attack by these accused on the deceased, he slashed his weapon against the accused and caused the injuries. It was argued by the Govt., Advocate, who is representing the State that when the opinion of the expert is not consistent with the eye-witnesses the evidence of the eye-witnesses cannot be rejected and their evidence should be preferred. Some times the opinion of the expert may not tally with the facts. But when the evidence of the eye-witnesses cannot be rejected for any reasons and the Court was satisfied that the evidence of the eye-witnesses is nothing but truth, certainly, in such circumstances, it may hesitate to act upon the evidence of the opinion witnesses. In this case, as mentioned above, the learned Sessions Judge has doubted the presence of PW-1 for the reasons he has given and PW-3 and 4 are admittedly related to PW-1. For the sole reason that they are related to PW-1 and her husband, the evidence of these witnesses cannot be rejected. But, at the same time that fact also cannot be completely lost sight of. Now the reasonableness of the evidence of the expert also has to be taken into consideration. According to PW-14, as there was damage to the brain of the deceased, he had taken the view that after such damage there was no possibility for the victim to withstand the assailants as he was bound to lose his conscience due to the damage to brain. When this view has been expressed by the doctor, PW-14 and no other differing opinion of any other author has been cited by the prosecution side the Court below has rightly accepted the opinion of the doctor PW-14. Further the view of the expert on the basis of the reasoning given by him cannot be said to be unreasonable or unacceptable. When such a doubt has been created from the evidence of the expert, naturally, the accused is entitled to get the benefit of doubt. Now, taking into consideration of the overall evidence of these witnesses, as the presence of PW-1 is doubted and the eye witnesses on the prosecution side also are related to PW-1 and the medical evidence is also to the effect that the accused persons could not have been attacked by the deceased after he sustained the head injury, naturally it leads to the inference that accused who also had sustained grievous. injuries might have been attacked before the deceased was attacked, making it that the deceased was the aggressor who

initiated the violence first. Hence the prosecution case that the accused were the aggressors, attacking the deceased first without provocation, appears to be a doubtful claim. Admittedly, in this case, there was no motive for the occurrence and the wordy quarrel between the deceased and the accused had led to this armed fight between them. In such circumstances, it is the duty of the Court to find out the real aggressor who was responsible for the violence. As mentioned above, though the prosecution has attempted to project that these accused persons were the aggressors and they first attacked the deceased with weapons, on account of which, the deceased had to retaliate by using his knife in self-defence, the evidence of the doctor has smashed this prosecution case, showing that after the head injury, the deceased could not have been able to attack the accused persons and his attack on the accused must have been earlier naturally the accused were entitled to private defence. The Apex Court has held in so many decisions that in any private revision, the Court cannot reassess the evidence and even if the Revisional Court takes a different view that cannot be a ground to interfere with the order of acquittal, unless the Court finds glaring legal defect of a serious nature which has resulted in the miscarriage of justice. It has also held that if the finding of the trial Judge appear to be a probable view and cannot be said to be unreasonable, that finding cannot be interfered with.

8. As mentioned above, the view taken by the learned Sessions Judge from the medical evidence that there is possibility for these accused persons having been attacked by the deceased, before they used their weapon, cannot be said to be an unreasonable or unacceptable view, this Court cannot interfere with the finding of the learned Sessions Judge and therefore the revision is liable to be dismissed.

9. In the result, the revision is dismissed.

10. Petition dismissed.