Chellammal Vs. Packiam and ors.

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Court : Chennai

Decided On : Oct-24-1975

Reported in : 1976CriLJ1666

Judge : Ratnavel Pandian, J.

Appellant : Chellammal

Respondent : Packiam and ors.

Advocate for Def. : Mr. C. K. Venkatanarasimhan

Advocate for Pet/Ap. : M/s. Aiyar, Mr. Sunder

Judgement :
ORDER

Ratnavel Pandian, J.

1. The revision-petitioner herein was P.W. 1 in Sessions Case No. 124 of 1974 on the file of the Additional Sessions Judge, Ramanathapuram at Madurai. She has filed this petition challenging the judgment in the above case acquitting respondents 1 to 3, who were accused 1 to 3 before the trial court. The said case is a double-murder case. These three respondents were charged under three heads, viz., accused 1 and 2 under charge No. 1 for an offence under Section 302 read with Section 34, I.P.C., for having caused the death of Thangaraj; accused-3

under charge No. 2 for an offence under Section 302 read with Section 109 for having abetted the said offence of murder, and then accused-1 under charge-3 for an offence under Section 302 I.P.C. for having committed the murder of one Ramu Nadar, husband of the petitioner. The occurrence in this case is said to have taken place on 7-6-1974 at about 9 a.m. in front of the house of deceased Ramu Nadar.

2. The prosecution case in short is that on 6-6-1974 (the day previous to the date of occurrence) at Erattai Ooorani, there was a panchayat in connection with accused-1 having uttered abusive language against one Chellammal (petitioner herein), wife of deceased Ramu Nadar, which resulted in ill-feeling between the family of the deceased and that of accused-1. On account of that on 7-6-1974, at about 9 a.m. accused-1 picked up a quarrel with deceased Ramu Nadar in front of his house and stabbed him twice on his back near the neck and on the flank. The injured succumbed to the injuries at 10.30 a.m. on 29-6-1974. At that time, Thangaraj, (one of the sons of P.W. 1 and deceased Ramu Nadar) intervened and quarrelled with the third accused son of accused-1. Accused-2 brother-in-law of accused-1, thereupon stabbed the deceased Thangaraj with a knife on his left side of his back on the left and right flanks. Accused-3 caught hold of the deceased Thangaraj by his head and accused-1 stabbed him near the left side of his neck with the knife. Thangaraj died instantaneously. The detailed facts of the case are well set out in the judgment of the trial court and I think there is no need to reiterate the same in this revision petition The prosecution examined nineteen witnesses including official witnesses and marked Exs. P-1 to P-23 and M.Os. 1 to 8. Of the witnesses examined, P.Ws. 1 and 3 to 6 were examined by the prosecution to speak about the occurrence. But, P Ws. 3 and 6 have not supported the prosecution case and therefore they were treated as hostile. P.W. 7, the Judicial II Class Magistrate, speaks about the recording of the dying declaration (Ex. P-2) from deceased Ramu Nadar between 5-25 p.m. and 5-45 p.m. Ex. P-3 is the certificate appended to Ex. P-2 by P.W. 8 to the effect that the patient was conscious throughout. P.W. 8, the Medical Officer attached to the Government Hospital, Ramanathapuram, speaks about the treatment given to deceased Ramu Nadar and the injuries as detailed in Ex. P-4. He has also deposed that he certified under Ex. P-3 in Ex. P-2 that the patient was conscious, when the dying declaration was recorded and that he (Ramu Nadar) died on 29-6-

1974 at 10.30 a.m. P.W. 9, the Civil Assistant Surgeon attached to the Government Hospital, Ramanathapuram, has given evidence about the injuries found on the person of deceased Ramu Nadar during the nost-mortem examination Ex. P-5 is the post-mortem certificate. P.W. 10, another Medical Officer of the same hospital, has issued Ex, P. 6, post-mortem certificate in respect of the injuries found on the person of deceased Thangaraj. P.W. 2 speaks about the motive viz., accused-1 having uttered abusive language against the petitioner, wife of Ramu Nadar, which resulted in the ill-feeling between the parties, and P.W. 13 speaks about the panchayat held in connection therewith. P.W. 14 speaks that he is the person who handed over to the police M. O. 7 which he took from the scene of occurrence and had hidden in a hayrick in the house of P.W. 1. P.W. 15, who is the Village Munsif of Krattai Ooorani, has deposed that he was present when the Sub-Inspector of Police inspected the scene and he has attested Exs. P-7 to F-11. P.W. 18, the Sub-Inspector of Police, would state that he went to the scene of occurrence on receipt of the phone message and at the scene he examined Ramu Nadar under Ex. P-16 (the first information report) Further he speaks about the registration of the case and the conduct of the inquest on the body of Thangaraj and the examination of the witnesses P.Ws. 1 to 6 and others during the inquest, and further investigation done by him. P.W. 19, the Inspector of Police, verified the investigation made by P.W. 18 and laid the charge-sheet against the accused on 10-8-1974.

3. When questioned with reference to the circumstances appearing against them in the evidence, accused-1 had denied the illicit intimacy between himself and P.W. 1. He further stated that the husband of P.W. 1 (Ramu Nadar), had returned from Malaya, but he did not use to talk to him and others and hence he told about this to the villagers and requested them to ask the husband of P.W. 1. about this and the villagers questioned about this and that on the next day, when he was returning from his garden, Thangaraj and Ramu Nadar (both deceased) came from their houses and pushed him down and Thangaraj sat on his chest and Ramu Nadar squeezed his testicles, whereupon the first accused became unconscious. The second accused has simply stated that he has got nothing to add to what accused-1 has stated. Accused-3 has stated that on 7-6-1974 (Friday) morning, when he was in his house, Thangaraj beat him and some time later when

he came out, he saw accused-1. Thangaraj, Ramu Nadar and P.W. 1 quarrelling and he saw the testicles of his father (A-1) being squeezed and Thangaraj sitting on the chest of his father and P.W. 1 poking her fingers into his eyes (Original in Tamil omitted) and that Sundari (wife of deceased Thangaraj) came with a knife. Further, he would state that he got the knife from her and thereafter he did not know what he did. The learned trial Judge, after analysing the evidence and the judicial dying declaration Ex. P-2 and the other statements of the deceased viz., Ex P-16 (first information report) recorded by P.W. 18 and Ex. P-19, the statement of deceased Ramu Nadar recorded under Section 161 Cr. P.C. by P.W. 18 has finally concluded thus:

Taking into consideration all these circumstances, it cannot be said that the prosecution has proved its case beyond reasonable doubt. Hence, I find accused 1 to 3 not guilty of the offences with which they are charged and they are acquitted.

The learned trial Judge has also recorded a finding, as contemplated under Section 344, Cr. P.C., that the witnesses P Ws. 3 to 6 have intentionally given false evidence and therefore they should be prosecuted for the offence of perjury after issuing a show cause notice,

4. Mr. Sunder appearing on behalf of M/s. Aiyar and Dolia, learned Counsel for the petitioners, challenges the finding of the trial court, stating that the said court, by improperly and illegally rejecting the evidence of P.W. 1 on the ground that it is not corroborated and Ex. P-2, viewing it on certain minor discrepancies, which amounts to a glaring defect of a serious nature, has caused substantial miscarriage of justice and therefore the finding of the Court should be set aside and the case remanded for a fresh trial. Further, he would contend that the trial court has by the above-said rejection, overlooked material evidence, which would justify interference by this Court with the order of acquittal.

5. Mr. C. K. Venkatanarasimhan, appearing for the respondents, has cited a catena of decisions and contended that this judgment of the learned Sessions Judge acquitting the respondents does not suffer from any manifest illegality and therefore the interests of justice do not require this Court to interfere with the order

ot acquittal and to order a retrial, which, if ordered, would amount to a transgression of the narrow limits of the revisional jurisdiction under Section 439 of the old Code (corresponding to Section 401 of the new Code), and therefore, having regard to the severe limitations placed on this Court's power to interfere with an acquittal, that too at the instance of the private party, when the State has not preferred any appeal, this Court should refrain from interfering with the finding of the court below. He would further contend that the trial court has not overlooked any material evidence, but on the other hand the reasons given by it for rejecting the entire evidence of the prosecution are quite correct and as such it cannot be said that its judgment suffers from any illegality or any other defect arising from any material evidence being overlooked.

6. Out of the decisions cited by him, I may point out certain decisions of our Supreme Court dealing with the extraordinary discretionary power vested in the High Court in interfering with the order of acquittal at the instance of the private party.

7. The learned Counsel brought to my notice the decision in Chinnaswamy v. State of Andhra Pradesh : [1963]3SCR412 wherein it has been held that the interference of the High Court with a finding of acquittal in revision would be justified in the following cases, viz., where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out the evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence, which was admitted by the trial court, to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence which is invalid under the law. It has also been held that these and other cases of similar nature can properly be held cases of exceptional nature, where the High Court can justifiably interfere with the order of acquittal; in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439 (4). Following and amplifying the above observations, it has been held in Mahendra Pratap Singh v. Sarju Singh : 1968 CriLJ665 that although the list of grounds given in the said decision is not exhaustive of all the circumstances in

which the High Court may interfere with an acquittal in revision, it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by the Supreme Court. Then, the learned Counsel cited Akalu Ahir v. Ramdeo Ram 1974 Mad LJ (Cri) 168 : 1973 Cri LJ 1404, wherein their Lordships of the Supreme Court, after having referred to all the leading decisions on this point including the above two decisions, have held that the power of revision conferred on a High Court by Section 439 read with Section 435, Cr. P. C,, is an extraordinary discretionary power vested in the superior Court to be exercised in aid of justice in other words, to set right grave injustices; that the High Court, when approached by a private party for exercising its power of revision from an order of acquittal, should refrain from interfering except when there is a glaring legal defect of a serious nature, which has resulted in grave failure of justice, and that the power being discretionary it has to be exercised judicially and not arbitrarily. Next, the learned Counsel brought to my notice the decision in Satyendra Nath v. Ram Narain : [1975]2SCR743 for the proposition that where the judgment of the Sessions Judge did not suffer from any manifest illegality and interests of justice did not require the High Court to interfere with the older of acquittal passed by the Sessions Court, the setting aside of the acquittal and ordering a re-trial is a transgression of the narrow limits of the revisional jurisdiction under Section 439 (4).

8. Mr. Sunder learned Counsel for the petitioner, relying on the observations of the Supreme Court made in Khetra Samal v. State of Orissa : [1970]1SCR880 viz., that the revisional jurisdiction conferred on the High Court under Section 439 should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure and there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice, and it is not possible to lay down the criteria for determining such exceptional cases which will cover all contingencies, would contend that this case is one of an exceptional character where there is a manifest error on a point of law, viz., rejection of the evidence of P.W. 1 on the ground that it is not corroborated and consequently there is a flagrant miscarriage of justice.

9. Therefore, having regard to the severe limitations placed on this Court's power to interfere with an acquittal, that too at the instance of the private party, when the State has not preferred any appeal, I shall now deal with the question whether there are sufficient grounds to order for retrial of this case.

10. As I have already mentioned at the outset, this is a double-murder case, wherein the father and the son have been murdered. As P.Ws. 3 to 6 have not supported the prosecution version, this case rests on the evidence of P.W. 1 who is an eye-witness to the entire occurrence and Ex. P-2, the dying declaration given by Ramu Nadar. The presence of P.W. 1 in the scene at the time of the occurrence cannot be challenged since the accused themselves have admitted her presence during the course of the occurrence, in their statements under Section 342, Cr, P. C. I do not piopose to deal at length with the unsound reasons given by the trial court for acquitting accused 1 to 3. In fact, the judgment of the learned Sessions Judge is totally bereft of any sound reason whatsoever. The observations made by the learned Judge for the rejection of the evidence of P.W. 1 are as follows:

Thus, we see that with regard to the actual occurrence, we have only the interested evidence of P.W. 1 since all the other eye-witnesses have turned hostile (vide para-22 of the trial court judgment).....Hence, the interested evidence of P.W. 1 alone cannot be accepted without sufficient corroboration on material particulars. As already pointed out, there is no corroboration in this case by the oral evidence of the other witness (Vide para-23 of the judgment).

Therefore, it is clear that the learned Judge of the trial court has proceeded on a misconception that unless the interested testimony of P.W. 1 is sufficiently corroborated on all material particulars, her evidence cannot be accepted.

11. Mr. Sunder would rightly contend that the trial court has wrongly excluded the admitted evidence of P.W. 1 on the ground that it is not sufficiently corroborated. In support of the above contention, he cited various decision of this Court and of the Supreme Court, I feel that it is not necessary to refer to all those rulings, but it would suffice if some of the leading decisions of our Supreme Court are mentioned In Vadively Thevar v. State of Madras : 1957 CriLJ1000 , then Lordships of the

Supreme Court, while dealing with Section 134 of the Evidence Act, with reference to a conviction based on the evidence of a single witness, have observed that the contention that in a murder case the court should insist upon a plurality of the witnesses is much too broadly stated: that the Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134, which by laying down that 'no particular number of witnesses shall, in any case, be required for the proof of any fact', has enshrined the well-recognized maxim that the evidence has to be weighed and not counted; that the matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected, and that if such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. In the same decision, their Lordships have observed that generally speaking the oral testimony in this case may be classified into three categories, viz., (1) wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. Therefore, the only test that has to be applied before accepting the evidence of a single witness is the test of reliability. If the court is convinced about the truth of the prosecution story on the evidence of a single witness, then conviction has to follow.

12. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof or disproof of a fact and it applies to both civil and criminal cases. The result is that in any case the testimony of a single witness, if believed, is sufficient to establish any fact. The rejection by the trial Judge of the evidence of P.W. 1 on the ground that her evidence is not corroborated is, therefore, opposed to the principle as laid down by the above Supreme Court decision Of course, it is for the court either to accept the evidence or to reject it by applying the test of reliability Then, it becomes a question of appreciation of evidence by the trial court. But, in this case, in my view, the lower court has committed an illegality by rejecting the evidence of P.W. 1 for want of corroboration.

13. Coming to the other ground for rejecting the evidence of P.W. 1 viz., that her evidence is interested as she is related to both the deceased, it cannot be

countenanced. The Supreme Court, while dealing with the value of the evidence of a close relation, has observed in Dalip Singh v. State of Punjab : [1954]1SCR145 as follows:

Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

The learned Counsel cited Darya Singh v. State of Punjab : [1964]3SCR397 , wherein the principle of law on this question has been stated as follows:

There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witensses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to the assailant, that naturally makes it necessary for the criminal court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance-witnesses or whether they were really present on the scene of the offence. If the offence has taken place, as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in bis place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he

would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted.

The reasoning given by the learned trial Judge for rejecting the interested evidence of P.W. 1 is that it alone cannot be accepted without sufficient corroboration on material particulars (vide para-23 of the judgment). As can be seen from the observations of the Supreme Court in Darya Singh v. State of Punjab AIR 1665 SC 328 : 1965 Cri LJ 350. it is this kind of reasoning that has been discountenanced by the Supreme Court. Thus, the trial court has committed a grave manifest illegality by improperly rejecting the evidence of P.W. 1, especially when her presence was admitted by all the accused in their statements under Section 342 and the suggestion made to P.W. 1 is to the effect that she was present at the time of the occurrence, that she poked into the eyes of accused-1 and that accused, after snatching the knife from Sundari (daughter-in-law of P.W. 1) stabbed both the deceased and thereby admitting the presence of P.W. 1 at the scene. Therefore, it cannot be said that P.W. 1 is a chance-witness. I am of opinion that her evidence has to be scrutinised like any other witness, bearing in mind the principles laid down by the Supreme Court in Darya Singh's case : [1964]3SCR397 .

14. The other piece of evidence is the dying declaration Ex. P-2 given by Ramu Nadar. It is submitted by the learned Counsel for the petitioner that the trial court has improperly rejected it. Sitting in revisional jurisdiction, I dc not want to express my opinion about the appreciation of the evidence made by the trial court and the reasons given by it for eschewing Ex P-2. It is, of course, open to the trial court to

reappraise the entire evidence at the re-trial of the case.

15. To sum up, the judgment of the trial court acquitting the respondents-accused suffers from a manifest illegality in overlooking the material evidence of P.W. 1, which has resulted in gross injustice and thus the interest of justice do require this Court to interfere with the order of acquittal passed by the learned Sessions Judge.

16. Accordingly, I allow this revision petition, set aside the order of acquittal passed by the Sessions Court and remand the matter to the trial court for a re-trial taking into considerations the above observations. I should like to add that the trial court, when it retries the case, should not be influenced by any observations made by me in justification of this order, but should bring to bear its own mind on the evidence of P.W. 1 and assess the value thereof along with other evidence available in this case.