

Settai Murugan and ors. Vs. State

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Court : Chennai

Decided On : Jul-05-2006

Reported in : 2006CriLJ3713

Judge : R. Balasubramanian and ;M. Jeyapaul, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 1124 of 2003

Appellant : Settai Murugan and ors.

Respondent : State

Advocate for Def. : T. Murugesan, Sr. Public Prosecutor

Advocate for Pet/Ap. : A.G. Rajan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Jeyapaul, J.

1. Accused 1 to 3, who suffered conviction for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, move the present appeal.

2. The learned II Additional Sessions Judge, Pondicherry, has returned a verdict of conviction as against A.1 to A.3 for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code and sentenced them to undergo life imprisonment and to pay a fine of Rs. 5,000/- in default, to undergo simple imprisonment for six months each. The fourth accused was absconding.

3. The charges as against these appellants/accused as well as the other accused, who faced the trial before the learned II Additional Sessions Judge, Pondicherry are that they formed an unlawful assembly in front of Hotel Mass at Maraimalai Adigal Salai, Pondicherry at about 4.45 p.m. on 7-6-2001 and thereby they committed an offence of rioting punishable under Section 147 of the Indian Penal Code; during the course of the said transaction, A.1 to A.5 were found with deadly weapons viz. steel knives and thereby they committed an offence punishable under Section 148 of the Indian Penal Code; during the course of the same transaction, A. 1 to A.5 due to previous enmity and in prosecution of common object stabbed Sagayam alias Sagayaraj on various parts of his body with steel knives to cause his death and thereby they committed an offence punishable under Section 302 r/w Section 149 of the Indian Penal Code.

4. The case as against the fourth accused Ravi alias Kurangu Ravi had been split up as he was found absconding. One Deva alias Devanathan was also arraigned as one of the accused in the FIR, but as he had died even during the course of investigation of the case, his name did not find a place in the final report.

5. The case in brief of the prosecution as found from the testimony of the witness examined on their side is as follows:

Sagayam alias Sagayaraj was working as a cleaner under the Tempo driver Manikandan. P.W.1, Saravanakumar, (P.W.3) and Arumugan (P.W.5) are tempo drivers and Shankar (P.W.4) and Saravanan (P.W.9) are auto drivers. They used to park this vehicles in front of Hotel Mass in Pondicherry.

6. The first accused Settai Murugan alias Velmurugan was elected as President of Tempo Drivers' Association. Sagayam alias Sagayaraj raised his objection over such election of the first accused as president of the said association. The

accused 1 to 4 threatened the said Sagayam alias Sagayaraj with dire consequences as he had chosen to object the election of the first accused. On 7-6-2001 at about 4.45 p.m. Manikandan (P.W.1) and Saravana Kumar (P.W.3) arrived at the scene of occurrence in their respective vehicles in no time on receipt of information from one Senthil. Narayanan (P.W.2), who was serving as a Traffic Police was on duty in front of the said Mass Hotel, Pondicherry at that point of time. P.W.4 and P.W.5 were also present at the occurrence place.

7. All the aforesaid accused encircled the said Sagayam alias Sagayaraj. A.1 to A.5 were armed with steel knives and the deceased Deva alias Devanathan was also armed with steel knife. Thereupon A. 1 to A.5 along with the deceased/accused Deva alias Devanathan attacked Sagayam alias Sagayaraj on various parts of his body and took to their heels in an auto rickshaw after the said Sagayam alias Sagayaran fell down to the ground unable to bear the attack from various quarters. P.Ws. 1, 3, 4 and 5 have spoken to the fact that they have witnessed the aforesaid occurrence. The Traffic Police Constable Narayanan (P.W.2) who was posted on duty in front of the said Mass Hotel, Pondicherry, having witnessed the ghastly crime being committed under his very nose, passed on information through walky talky to Orleanpet Police Station, Pondicherry about the occurrence. Mr. M. Angappan (P.W.18), the Sub Inspector of Police, having entered such an information that one male person was seriously stabbed in front of Hotel Mass, Pondicherry at about 4.45 p.m. on 7-6-2001 in the General Diary Exs. D.1 and D.2 maintained by the said police station and rushed to the scene of occurrence. P.W.2 also passed on information within another ten minutes that the injured person died on the spot. P.W. 1, Manikandan rushed to Orleanpet Police Station, Pondicherry at 5.00 p.m. on the said day and gave a statement with regard to the occurrence to the Inspector of Police (P.W.18). P.W.18 recorded the statement, Ex. P. 1 given by P.W. 1. He registered a case in Crime No. 136 of 2001 under Section 302 r/w Section 34 of the Indian Penal Code as against A.1 to A.4. Mr. S. Kuppusamy (P.W.19), the Inspector of Police, was informed about the registration of the case by P.W.18, P.W. 19 came down to the scene of occurrence near the Hotel Mass, 'Pondicherry at about 5.30 p.m. and having received a copy of the FIR from the police constable found over there, drew a rough sketch Ex. P. 19 reflecting the scene of crime. He also prepared observation mahazar Ex. P. 20

in the presence of Selvam P.W. 10. On examining the witnesses who were present over there, he came to the conclusion that totally 12 witnesses were involved in the occurrence. Therefore he altered the profile of offences into one under Sections 147, 148 and 302 r/w Section 149 of the Indian Penal Code. He prepared an express report Ex. P. 50 and despatched the same to the learned Judicial Magistrate concerned.

8. P.W. 19 proceeded to Government Hospital, Pondichery and conducted inquest on the dead body of Sagayam alias Sagayaraj between 9.00 a.m. and 12.30 p.m. on 8-6-2001 in the presence of Panchayatdars and prepared inquest report Ex. P.21. Mur.ugaiyan, P.W. 11, was one of the Panchayatdar who participated during the course of inquest held by the Inspector of Police P.W. 19.

9. Dr. Balaraman (P.W. 7) having received a requisition from the Inspector of Police P.W. 19 commenced the post mortem examination on the dead body of Sagayam alias Sagayaraj at 4.00 p.m. on 8-6-2001. He found the following injuries and other features on the dead body of the deceased Sagayam alias Sagayaraj:

External injuries (ante mortem)

1. Obliquely placed incised wound 12 x 4x4 cms over left side of neck below mandible cutting through internal carotid artery and jugular veins and muscles of neck.

2. Transversely placed incised wound 6 x 2 x 2 cms over front of neck below thyroid cartilage level partly cutting through trachea.

Incised wound 4 x 2 x 0.5 cm over right parieto occipital region of head.

Incised wound 4 x 1 x 0.5 cm over frontal region of head left side.

Penetrating wound 3.5 x 1.5 x entering thorax over front of chest right side 2 cms below nipple.

Abrasion 1 x 1 cm over chest right side.

Incised wound 2 x 0.5 x 0.5 cm over middle of chest.

Incised wound 2.5 x 1 x 1 cm over chest left side 7 cm above nipple.

Incised wound 2.5 x 1 x 0.5 cm over chest left side 5 cm below nipple.

Incised wound (1) 3 x 0.5 x 0.5 cm and (2) 6 x 2.5 x 1 cm over inner aspect of right upper limb.

Linear abrasion 3 cms length over dorsal aspect of base of right thumb.

Incised wound 2 x 0.5 x 0.5 cm over base of right ring finger dorsal aspect.

Incised wound 2 x 0.5 x 0.5 cm over lower abdomen right side.

Incised wound 3x2x1 cm over outer aspect of right hip.

Transversely placed linear abrasion 10 cms length over front right thigh.

Linear abrasion 5 cms length above right knee joint.

Incised wound 4x2x2 cms over middle of lower abdomen near pubic region.

Incised wound 6x4x2 cms over dorsum off left wrist joint.

Incised wound 3 x 2 x 0.5 cm over left middle finger.

Incised 2 x 1 x 0.5 cm over left thumb.

Incised wounds 1 x 0.5 x 0.5 cm, 2 x 0.5 x 0.5 cm, present over middle of back of chest.

Incised wound 3x1x1 cm and 4 x 1.5 x 1 cm over middle of back of abdomen.

Internal Examination:

Head (scalp, skull, brain, meninges and blood vessels) ; Skull - NAD;

Brain - Pale

Neck structures (skin, muscles, hyoid, described thyroid, cartilage, larynx, trachea, under injury bronchi etc.) No. 1 & 2

Thorax (a) Chest wall : On dissection of injury No. 5, the wound has entered

(b) Pleural cavity : thorax between 3rd and 4th ribs into upper lobe of right

(c) Oesophagus : Lung for 1 cm depth;

(d) Bronchi:

(e) Lungs - Right : Collapsed and pale Left : Pale

(f) Heart and Pericardium : Nad Abdomen and Pelvis

Stomach and contents : Brownish semi-solid material 50 gms; No specific smell.

Pancreas : Pale

General organs : Nad

Muscles and Bones : Nad

The Doctor, P.W. 7, having completed the post mortem examination issued postmortem certificate Ex. P3. He also expressed final opinion in the post-mortem report Ex. P.4 that the deceased Sagayam alias Sagayaraj appeared to have died of shock and haemorrhage due to multiple injuries found all over his body. Of course, the post mortem doctor has also incidentally referred to the fact that the said Sagayam alias Sagayaraj was also found consumed alcohol.

10. P.W. 19 proceeded to Veerapattinam along with the police party and arrested Ravi alias Pokkai (A.2), Prem alias Premkumar (A.3), Ravi alias Kurangu Ravi (A.4) and Deva alias Devanathan (deceased), Selvam alias Selvakumar (A.6), Sukku alias Christian (A.7), Siva alias Sivakuar (A.8) and Suresh (A. 5) in the presence of Sagayaraj (P.W. 13). On the basis of the admissible portions in the confession statements Exs. P. 24, 25, 26, 27 and 28 given by the said accused Ravi alias Pokkai Ravi, Ravi alias Kurangu Ravi, Prem alias Premkumar, Suresh and Deva alias Devanathan (deceased), the personal apparels worn by the above accused at the time of occurrence M.Os. 12 to 20 were recovered from those accused. The knives M.Os. 6 to 11 also were recovered on the basis of the said

confession statements at the instance of those accused. All the aforesaid material objects were recovered under the cover of mahazar Ex. P.29 in the presence of Sagayaraj (P.W. 13). All the aforesaid accused were remanded to judicial custody. The material objects were also submitted to the learned Judicial Magistrate for the purpose of sending them for chemical examination. The tempo vans alleged to have been used by the accused for the commission of the offence were also recovered under the cover of mahazars Exs. P. 40, 41 and 42.

11. On 20-6-2001 at about 7.00 p.m., P.W. 19 arrested A.1 in the presence of Kandan P.W. 15 and recorded his confession statement. On the basis of the admissible portion Ex. P.43 in the confession statement given by the first accused, the blood stained shirt M.O. 20 was recovered under the cover of mahazar Ex. P. 46. The said accused as well as the material objects recovered from him were remanded to judicial custody. The chemical analyst P.W. 6 has spoken to about the chemical analysis report.

12. Mr. V. Delvasigamani (P.W. 20), Inspector of Police, who took up the case for further investigation from his predecessor P.W. 19 recorded the statement of Dr. Balaraman, P.W. 7, and having thoroughly perused the entire records lodged final report as against A. 1 to A. 11 for offences punishable under Sections 147, 148 and Section 302 r/w Section 34 of the Indian Penal Code.

13. The incriminating circumstances found in the testimony of the prosecution witnesses were put forth in the form of questionnaire under Section 313 of the Code of Criminal Procedure to the accused. The accused, responding to the questionnaire, have stated that a false case has been foisted on them. They also denied each and every incriminating circumstances spoken to by the witnesses.

14. The trial Judge having relied upon the ocular testimony of P.Ws. 1 to 5 and the seizure of the weapon of offence from the accused A.1 to A.3 came to the conclusion that A. 1 to A. 3 have committed the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code.

15. The other accused, except A.4 Ravi alias Kurangu Ravi, were acquitted of all the charges framed as against them. The other charges as against A. 1 to A.3 also

stood not proved before the trial Court,

16. On the side of the defence only two documents viz., Exs. D.1 and D.2 the General Diary extracts were marked.

17. Learned Counsel for the appellants/ A. 1 to A.3 would submit that the trial Judge, who had chosen to segregate A. 1 to A. 3 on the basis of the FIR Ex. P1 should have disbelieved the FIR which is writ large with embellishment as regards the role of the other accused in this case. The information recorded in the general diary (Exs. D. 1 and D.2) should have been in all fairness registered as FIR by the Sub Inspector of Police P.W. 18. As the information Ex. P. 1 has been received later in point of time, it should not have been registered as FIR by P.W. 18. There was no strong enmity established by the prosecution between the accused and the deceased. The lethal weapons alleged to have been handled by the accused were not identified by the alleged ocular witnesses P.Ws.. 1 to 5. The doctor who conducted the post-mortem examination has given his final opinion even without seeing the weapon of offence marked in this case. Some of the witnesses have come out with a contradictory version as to the exact scene of occurrence and some of the ocular witnesses have spoken to the fact that the occurrence have taken place 30 feet away from Mass Hotel. The learned trial Judge, having doubted the role of the other accused, should have adopted the same yardstick and acquitted A. 1 to A. 3 also, the learned Counsel for the appellants/accused would further submit.

18. The learned Senior Public Prosecutor for Pondicherry would submit that Exs. D. 1 and D. 2 are bereft of details and that was the reason why P.W. 18 had to wait for full-fledged information to register a case. The strong enmity between the accused and the deceased has been spoken to by all the ocular witnesses as well as by yet another auto driver Saravanan P.W. 9 in this case.

19. He would further contend that the very fact that the weapons handled by each and every accused in this case could not be identified by the witnesses would go to show that the eye-witnesses have come out with natural version before the Court. It is humanly impossible for any person to identify each and every weapon handled by as many as six accused in this case. Though some of the witnesses

have spoken to the effect that the occurrence had taken place about 30 feet away from Mass Hotel, all the witnesses have uniformly spoken to the fact that the occurrence had taken place just in front of Mass Hotel. As telling testimony is available as against A. 1 to A. 3, the trial Court has rightly segregated them and returned a verdict of conviction as against them which does not warrant for interference by this Court.

20. Manikandan (P.W. 1), Saravana Kumar (P.W. 3), Arumugam (P.W. 5), Saravanan (P.W. 9) have spoken in one voice that on the previous day there was an election for the tempo drivers association. In the said election, the first accused was elected as President of the said association. They have categorically spoken to the fact that the deceased Sagayam alias Sagayaraj was sternly warned not only by the first accused but also by A. 1 to A. 5 as he had the guts to raise dissenting voice against the election of the first accused as President of the said association. Those witnesses have link with the tempo drivers association. Therefore their testimony with regard to the animosity between A.1 to A. 5 and the deceased cannot be ignored. Further the Court finds that there is ocular testimony in this case to establish the case of the prosecution.

21. P.Ws. 1, 3, 4 and 5 who were tempo drivers and auto drivers were present at the time when the core occurrence unfolded. They had spoken to the fact that the deceased who was unarmed was encircled by these accused along with others and was done to death. They being the drivers of the tempo and auto, have come to the rescue of the deceased Sagayam alias Sagayaraj and happened to witness the whole occurrence. Therefore, their testimony cannot be simply discarded by this Court.

22. Yet another testimony which inspires confidence of this Court is the testimony of Traffic Constable Narayan (P.W. 2). There is no reason for the traffic constable P.W. 2 to come and depose that under his very nose the whole occurrence took place. He has categorically spoken to the fact that these accused along with others armed with lethal weapons viz. steel knives attacked the unarmed Sagayaraj and caused his death. It is pertinent to note that though P.W. 2 was serving as traffic constable, he being an ocular witness to the occurrence, has

chosen to identify the assailants when he was examined before the trial Court. The very fact that P.W. 18 had received information from P.W. 2, the moment Sagayaraj sustained the lethal injuries and thereafter succumbed to his injuries as recorded in the General Diary Exs. D.1 and D. 2 would establish that Narayanan P.W. 2 was at the scene of occurrence at the time when the offence was committed. The evidence of P.W. 2 lends credence to the other ocular witnesses P.Ws. 1 and 3 to 5.

23. P.W. 18 has chosen to record the information furnished by P.W. 2 in the general diary Exs. D. 1 and D.2 as the information was bereft of much details. Even otherwise, it is found that such a noting found to the general diary does not give a different story. The brief information passed on to P.W. 18 that somebody was attacked by certain assailants synchronised with the FIR Ex. P.1 given by P.W. 1 to P.W. 18.

24. The occurrence had taken place at 4.45 p.m. P.W. 18 has chosen to record the brief information received from P.W. 2 at 4.45 p.m. itself, P.W. 1 has reached the police station by 5.00 p.m. within 15 minutes from the time of occurrence and lodged the FIR Ex. P. 1. We find that there is no time gap for embellishing anything in the FIR Ex. P.1.

25. As rightly pointed out by the learned Senior Public Prosecutor for Pondicherry, it may not be possible for the witnesses to identify each and every weapon handled by as many as six accused assailants. Of course, it is possible to identify a weapon used by a single assailant in a case. If at all the ocular witnesses have chosen to identify each and every weapon handled by every one of the assailants, it may definitely look artificial. The Court finds that the ocular witnesses have come out with natural version before the Court. The non-identification of the weapons handled by each and every accused does not go to the root of the case.

26. The post-mortem doctor P.W. 7 has found that as many as 20 incised wounds and 2 abrasions were found on the body of the deceased Sagayam alias Sagayaraj. He has given his opinion during the course of examination that all the incised wounds would have been caused by a sharp edged weapon. It is not necessary that in all the cases the weapon of offence should be shown to the post

mortem doctor before he is examined. The testimony of the doctor, who conducted the post-mortem examination cannot be discarded on the ground that he had expressed his final opinion even before he could see the weapon of offence. After all his observation is only an opinion of an expert.

27. The occurrence had taken place only in front of Mass Hotel. Some witnesses had seen the deceased running for a distance after receiving some lethal injuries. The witnesses have spoken to the fact that the deceased was ultimately butchered by the assailants.

28. The trial Court has segregated those three accused excluding the fourth accused who is absconding on the basis that only the names of the first four accused found place in the FIR lodged by P.W. 1. P.W. 1 has not stated in the FIR, Ex. P. 1 that some other persons also were involved in the said occurrence. That is the reason why the trial Court has chosen to convict these three accused who faced the trial for offences punishable under Section 302 r/w Section 34 of the Indian Penal Code in the absence of the fourth accused, who is absconding.

29. The accused herein cannot take advantage of the acquittal recorded as regards the other accused as the verdict of the learned II Additional Sessions Judge, Pondicherry is based on the FIR which flowed from the mouth of the ocular witness P.W. 1. We find no reason to interfere with the judgment and conviction recorded by the learned II Additional Sessions Judge, Pondicherry on sound reasoning and tell tale ocular testimony.

30. In the result, the judgment of conviction and sentence passed in S.C. No. 15 of 2003 on the file of the learned II Additional Sessions Judge, Pondicherry stands confirmed and the appeal stands dismissed.