iyappan Vs. State Rep.by

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Court : Chennai

Decided On : Mar-27-2013

Judge : The Honourable Mr. Justice a.Selvam

Appellant : iyappan

Respondent : State Rep.by

Judgement :
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

27. 03/2013 CORAM THE HONOURABLE MR. JUSTICE A.SELVAM AND THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN Crl A(MD)No.218 of 2007 Crl A(MD)No. 495 of 2007 & Crl A(MD)No.396 of 2008 Iyappan .. Appellant/2nd Accused in Crl A.No.218/07 Murugan .. Appellant/3rd Accused in Crl A.No.495/07 Karuppasamy .. Appellant/1st Accused in Crl A.No.396/08 Vs. State rep.by the Inspector of Police, Palayamkottai Police Station, Tirunelveli City, Crime No.87 of 2006. .. Respondent/Complainant in all the Appeals. Criminal appeals filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 23.02.2007 passed in Sessions Case No.194 of 2006 by the Additional District and Sessions Court/Fast Track Court not II, Tirunelveli. !For Appellants ... Mr.N.Mohideen Basha (Crl.A.Nos.218 & 495/07) For Appellant ... Mr.S.P.Maharajan (Crl.A.No.396/08) ^For Respondent ... Mr.K.S.Durai Pandian Addl.Public Prosecutor (All Appeals.) :COMMON JUDGMENT (Judgment of the Court was delivered by A.SELVAM, J.) The conviction and sentence dated 23.02.2007 passed in Sessions Case No.194 of 2006 by the Additional District and

Sessions Court/Fast Track Court not II, Tirunelveli are being challenged in the present Criminal Appeals.

2. The case of the prosecution is that PW2-Durgadevi and PW3-Nagarajan are the children of the deceased by name Angammal and all of them have lived in Vetrivinayagar Kovil Street, Vannarpettai. On 18.01.2006 at about 10.00 pm., the parents of PWs.2 and 3 have performed pooja so as to drive effect of evil eye and due to that wranglings have happened in between the parents of PWs.2 and 3 and first accused by name Karuppasamy. The complainant (PW1) and senior paternal uncle of PWs.2 and 3 have desisted the parents of PWs.2 and 3 and first accused. On 19.01.2006 the father of PWs.2 and 3 has gone out by using his motor cycle. On the same day, at about 12.30 pm., while the deceased has been standing in front of the house, PW2 has come from school due to her illness. On the same day, PW3 has not attended school due to his illness. At that time all the accused have come to the place of occurrence with deadly weapons and all of them have indiscriminately attacked the deceased and subsequently an ambulance has come from Sakthi hospital and PW1 has taken the deceased to the said hospital and subsequently given the complaint (Ex.P7).

3. On receipt of Ex.P7, PW8, the concerned Sub Inspector of Police has registered the same in Crime No.87 of 2006 under Sections 341, 294(b), 324 and 307 of the Indian Penal Code and the printed copy of First Information Report has been marked as Ex.P8.

4. The Investigating Officer has taken up investigation, conducted inquest, arrested all the accused, recovered material objects and after completing investigation laid a final report on the file of the Judicial Magistrate not I, Tirunelveli. The final report has been taken on file in PRC No.11 of 2006. The Judicial Magistrate not I, Tirunelveli has issued summonses to all the accused and furnished copies of relevant documents under section 207 of the Code of Criminal Procedure, 1973 and after coming to a conclusion that the offences alleged to have been committed by all the accused are triable by Sessions Court, he committed the same to the Principal District and Sessions Court, Tirunelveli and taken on file in Sessions Case No.194 of 2006 and subsequently made over to the

trial Court.

5. The trial Court after considering the materials found on record has framed first charge against all the accused under Section 341 of the Indian Penal Code, second charge against all of them under Section 302 r/w 34 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution PWs.1 to 12 have been examined and Exs.P1 to P20 and M.Os.1 to 4 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating material available in evidence against them, they denied their complicity in the crime. On the side of the accused, DW1 has been examined and Ex.D1 has been marked.

8. The trial Court after perpending the available evidence on record has found all the accused guilty under Section 341 of the Indian Penal Code and sentenced each of them to undergo one month rigorous imprisonment and also imposed a fine of Rs.500/- upon each of them with usual default clause. The accused have also been found guilty under Section 302 r/w 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.10,000/- upon each of them with usual default clause. Against the conviction and sentence passed by the trial Court, the first accused as appellant has preferred Criminal Appeal No.396 of 2008, the second accused as appellant has filed Criminal Appeal No.218 of 2007 and third accused as appellant has filed Criminal Appeal No.495 of 2007 on the file of this Court.

9. Since common questions of law and facts are involved in all the Criminal Appeals, common Judgment is pronounced.

10. The sum and substance of the case of the prosecution is that PWs.2 and 3 namely Durgadevi and Nagarajan are the children of the deceased by name Angammal and all of them have lived in Vetrivinayagar Kovil Street, Vannarpettai. On 18.01.2006 at about 10.00 pm., the parents of PWs.2 and 3 have performed

pooja so as to drive effect of evil eye and due to that wranglings have occurred betwixt the first accused and parents of PWs.2 and 3. The complainant viz., PW1 and senior paternal uncle of PWs.2 and 3 have desisted them. On 19.01.2006 the father of PWs.2 and 3 has gone out. On the same day at about 12.30 pm, while PWs.2 and 3 and their mother (deceased) are in their house, all the accused have come with deadly weapons and hurled invectives by using filthy words against the deceased and all of a sudden they attacked her indiscriminately and subsequently the complainant has taken the deceased to Sakthi hospital by using an ambulance van and after some time she passed away.

11. For the purpose of proving the guilt of the accused punishable under Sections 341 and 302 r/w 34 of the Indian Penal Code, the prosecution has examined the complainant by name Avudayappan as PW1, children of the deceased by name Durgadevi and Nagarajan as PWs.2 and 3, senior paternal uncle of PWs.2 and 3 as PW4. The doctor who admitted the deceased first in Sakthi hospital has been examined as PW9 and the doctor who conducted necropsy has been examined as PW10.

12. Even though the complainant by name Avudayappan has been examined as PW1 and even though he has been cited as one of the eye witnesses, for the reasons best known to him, he has become a hostile witness and his signature alone has been marked as Ex.P1. The entire complaint alleged to have been given by PW1 has been marked as Ex.P7 by the Sub Inspector of Police, who registered the same in Crime No.87 of 2006 under Sections 341, 294(b), 324 and 307 of the Indian Penal Code.

13. As pointed out earlier, PW1 has not supported the case of the prosecution. Apart from the evidence of PW1, the prosecution has chosen to examine the remaining alleged three eye witnesses namely, Durgadevi, Nagarajan and Chinnadurai as PWs.2 to 4.

14. The specific evidence given by PW2 is that the occurrence has taken place on 19.01.2006 at about 12.30 pm., and prior to occurrence, she, her brother (PW3), mother(deceased) and senior paternal uncle (PW4) are in their house and at that time all the accused have come there by using an Auto with deadly weapons and

the first accused has hurled invectives against her mother (deceased) by using filthy words and all of them have attacked her mother and subsequently PW1 has taken her mother to Sakthi hospital through an ambulance van.

15. The evidence given by PW2 has been clearly corroborated by the evidence given by PWs.3 and 4. As stated earlier, PW3, Nagarajan is the younger brother of PW2 and PW4, Chinnadurai is the senior paternal uncle of PWs.2 and 3. PWs.3 and 4 have categorically stated in their evidence that on 19.01.2006 at about 12.30 pm., all the accused have come to the place of occurrence by using an Auto and suddenly they attacked the deceased by using deadly weapons.

16. The doctor who admitted the deceased in Sakthi hospital has been examined as PW9 and his specific evidence is that on 19.01.2006 at about 12.55 pm, the deceased has been brought to Sakthi hospital and he found the following injuries:

1. Abdominal injury - stab wound 3 cm. 2.Amputation right upper limb - Elbow level - no liable vital part 3.Amputation left thumb.

17. The intimation given to police has been marked as Ex.P9 and Accident Register has been marked as Ex.P10.

18. The doctor who conducted necropsy has also been examined as PW10 and he found the following injuries: (1) Abrasions back of left elbow 4x2cm;(L) knee 4x2 cm; (2) Clean-cut injury, base of left thumb x entire circumstance, the distal portion of the finger is missing. (3)Vertical incised wound (L) breast, above the nipple, 7x.5x.5 cm. (4)Two transverse incised wounds outer aspect of upper part of right thigh; each 4x.5x.5; (5)R upper limb in hospital bandage, on removal of bandage, beveled cut injury towards the elbow, 20x8 cm x bone deep back of right forearm & elbow; the underlying muscles, vessels and both bones clean cut. (6)Transverse incised wound R subcostal region, 5x2 cm. X peritoneal cavity depth; the outer end is sharp and the inner end is blunt. The postmortem certificate given by PW10 has been marked as Ex.P13. Further PW10 has opined that "the deceased would appear to have died of shock and haemorrhage due to heavy cut injury in the right forearm." 19. The trial Court after considering the evidence given by PWs.2 to 4, 9 and 10 and other connected witnesses has invited conviction and sentence

against all the accused as stated supra.

20. The learned counsel appearing for the appellants have uniformly contended that the specific case of the prosecution is that the occurrence has taken place at about 12.30 pm., on 19.01.2006 and the First Information Report has been given on 2.30 pm., on the same day and further PW9 has not specifically stated the name of the person(s) who brought the deceased to Sakthi hospital and on the date of occurrence, PWs.2 and 3 are not in their house and in short, they are not eye witnesses and even in Ex.P7, the complaint, presence of PW4 has not been stated. Likewise, in the inquest report (Ex.P18) presence of PW1 alone has been stated and presence of PWs.2 to 4 have not at all been stated and further, from the evidence of PW2 the Court can easily discern that after the attacks made by the accused on the person of the deceased she has fallen down and one Kanaga has given water to her. But she has not been examined. Further the prosecution has not seized bloodstained earth and sample earth from the place of occurrence and the weapons alleged to have been used by all the accused in the place of occurrence have not been subjected to chemical examination and the prosecution has also failed to seize severed left thumb of the deceased and further there is a clear discrepancy with regard to number of injuries found on the person of the deceased between the evidence of PWs.9 and 10. Further, PW9 has categorically admitted in his evidence that he has given intimation to the police under Ex.P9 at about 12.55 pm., But he has been examined by the Investigating Officer on the same day at about 1.00 pm., Further Ex.P7 has been sent to Court very belatedly without proper explanation and the trial Court without considering the fact that the entire case of the prosecution bristles with vital infirmities, has erroneously invited conviction and sentence against all the accused under Sections 341, and 302 r/w 34 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court against all the accused are liable to be set aside.

21. Per contra, the learned Additional Public Prosecutor has contended that in the instant case even though the complainant (PW1) has become a hostile witness, the prosecution has clearly established the alleged guilt of the accused punishable under Sections 341 and 302 r/w 34 of the Indian Penal Code by way of examining PWs.2 to 4 and in fact their evidence has been clearly corroborated by medical

evidence by way of examining PWs.9 and 10 and further the prosecution has given clear explanation for not seizing bloodstained earth and sample earth from the place of occurrence and further mere delay in sending the First Information to Court is not fatal to the case of the prosecution and the trail Court after considering the overwhelming evidence available on record, has rightly invited conviction and sentence against all the accused under Sections 341 and 302 r/w 34 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are not liable to be interfered with.

22. The first and foremost attack made on the side of the appellants is that the specific evidence given by PW9 is that he admitted the deceased in Sakthi hospital at 12.55 pm., and immediately he has given intimation to police station and he has been examined by the concerned Inspector of Police on the same day by 1.00 o' clock, whereas, Ex.P7 has been registered on the same day at about 2.30 pm. and therefore the entire case of the prosecution is nothing but false.

23. It is seen from the evidence given by PW9 that he admitted the deceased on 19.01.2006 at about 12.55 pm., Further he deposed to the effect that immediately he has given intimation to the concerned police and the concerned Inspector of Police has examined him at 1.00 pm., It is an admitted fact that Ex.P7, complaint has been registered on 19.01.2006 at about 2.30 pm. Since Ex.P7 has been registered on 19.01.2006 at about 2.30 pm. it is highly impossible on the part of the Investigating Officer (PW12) to examine PW9 on 19.01.2006 at about 1.00 o' clock. Therefore, the evidence given by PW9 to that aspect is nothing but a slip of tongue and the same cannot be given effect to. Further PW12 has clearly stated in his evidence that he visited hospital on the same day at about 3.30 pm and examined PW9 and other connected witnesses. Therefore, the first and foremost contention put forth on the side of the appellants/accused is of no use.

24. The second/vital attack made on the side of the appellants/accused is that in the instant case, PWs.2 and 3 are the children of the deceased and both of them are school going children and the occurrence has taken place on 19.01.2006 at about 12.30 pm., and since both of them are school going children, definitely they would not have seen the occurrence and further in the inquest report, presence of

PW1 has not been stated and in Ex.P7, complaint presence of PW4 has not been stated and therefore, the prosecution has virtually failed to adduce proper evidence with regard to alleged occurrence and the trial Court has failed to look into the same.

25. As stated earlier, PWs.2 and 3 are the children of the deceased and PW4 is their senior paternal uncle. In the evidence given by PW2 it has been clearly stated that on 19.01.2006 morning she attended school. But due to illness, she left the school and arrived home. The evidence of PW3 is that due to illness on 19.01.2006 he has not attended school.

26. On the side of the accused, the teacher of the concerned school, where PW2 studied on the date of occurrence, has been examined as DW1 and her specific evidence is that till 11.00 am she conducted class and her further evidence is that she does not know when PW2 has left the school on 19.01.2006. Apart from the evidence given by DW1, on the side of the accused, Ex.D1 has been marked. Ex.D1 is a xerox copy of attendance register, wherein it has been clearly stated that on 19.01.2006, PW2 has been absent. At this juncture, a faint attempt has been made on the side of the appellants/accused to the effect that in Ex.D1 on 19.01.2006, initially a slash has been put and subsequently altered into 'a' and therefore, no credence could be attached to the same. It is an admitted fact that Ex.D1 is a document marked on the side of the appellants/accused. Since Ex.D1 is a document marked on the side of the appellants/accused, the appellants/accused cannot question the materials found therein and further with regard to the said aspect put forth on the side of the appellants/accused, no specific question has been posed to DW1. Therefore, viewing from any angle, the second/vital attack made on the side of the appellants/accused is sans merit.

27. The third attack made on the side of the appellants/accused is that in Ex.P18, inquest report, name of PW1 alone is mentioned and names of PWs.2 to 4 have not at all been mentioned and further, in Ex.P7, complaint name of PW4 has not been mentioned and therefore, presence of PWs.2 to 4 in the place of occurrence is highly doubtful.

28. It is true that in Ex.P18 inquest report, name of the complainant alone is found place. likewise, in Ex.P7 complaint, presence of PW4 is not found place.

29. For the purpose of deciding the above aspects put forth on the side of the appellants/accused, it is very much essential to rely upon the recision reported in (2011)6 Supreme Court Cases 288 [Brahm Swaroop and another Vs. State of Uttar Pradesh], wherein at paragraph - 10 it is observed as follows: "Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery, etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest." 30. Even from a cursory look of the decision referred to supra, it is easily discernible to the effect that mere non-mentioning of names of witnesses in an inquest report is not fatal to the case of the prosecution and further inquest report is not a substantive piece of evidence so as to believe the case of the prosecution and further it is also equally a settled principle of law that mere non-mentioning of names of witnesses in the complaint would not militate the case of the prosecution and further it is an archaic principle of law that in the First Information Report all details of alleged overtacts by the concerned accused and all details of persons who witnessed the occurrence need not be minutely stated. Therefore, viewing from any angle, the third attack made on the side of the appellants/accused goes out without merit.

31. The fourth contention put forth on the side of the appellants/accused is that the specific evidence given by PW2 is that after attacks alleged to have been made by all the accused on the person of the deceased, she has fallen down and one Kanaga has given water to her. But the prosecution has not chosen to examine her and therefore, the prosecution has not come forward with genuine case and the trial Court has failed to look into the said aspect.

32. It is seen from the evidence given by PW2 to the effect that after attacks alleged to have been made by all the accused, the deceased has fallen down and immediately one Kanaga has given water to her. But as rightly pointed out on the side of the appellants/accused, the said Kanaga has not been examined as one of the prosecution witnesses and further no explanation has been given with regard to her non-examination.

33. It has already been pointed out that PWs.2 to 4 have given cogent and trustworthy evidence so as to prove the alleged guilt of the accused punishable under Sections 341 and 302 r/w 34 of the Indian Penal Code. Since in the instant case the prosecution has adduced evidence in plenitude with regard to motive and details of attacks alleged to have been made by all the accused, mere non-examination of the said Kanaga would not affect the case of the prosecution. Therefore, the aforesaid contention put forth on the side of the appellants/accused cannot be given effect to.

34. The fifth contention put forth on the side of the appellants/accused is that the prosecution has failed to recover beweltered soil and sample earth from the place of occurrence and further the prosecution has failed to send all materials objects for chemical examination and therefore the Court cannot come to a conclusion that the entire occurrence has taken place in the place of occurrence as pointed out on the side of the prosecution.

35. For the purpose of analysing the aforesaid aspect, the Court has to look into the evidence given by PW12, Investigating Officer coupled with Ex.P2, observation mahazer. In Ex.P2 it has been clearly stated that PW12 has reached the place of occurrence at about 3.30 pm and before his arrival, the place of occurrence has been bestrown and also daubed by using dung water. Since in Ex.P2 itself a clear explanation has been given with regard to non-recovery of beweltered soil and sample earth, the contention put forth on the side of the appellants/accused would not affect the case of the prosecution. Further mere non- sending of material objects for chemical examination is not fatal to prosecution. Further PW10, doctor who conducted autopsy on the body of the deceased has clearly opined that the injuries sustained by the deceased would have been caused by using an aruval

and therefore, viewing from any angle, the aforesaid contention put forth on the side of the appellants/accused is of no use.

36. The sixth contention put forth of the side of the appellants/accused is that the specific evidence given by PW9 is that the left thumb of the deceased has been severed. But the Investigating Officer has not seized the same from the place of occurrence.

37. It has already been pointed out that PW12, Investigating Officer has reached the place of occurrence on 19.01.2006 at about 3.30 pm., and in Ex.P2, observation mahazer it has been clearly stated to the effect that the place of occurrence has been bestrown and also daubed by using dung water. Under the said circumstances, PW12 would not have seized the severed left thumb of the deceased and that itself would not militate the case of the prosecution and further mere non- recovery of severed left thumb of the deceased, would not make any circumstance so as to disbelieve the cogent and trustworthy evidence given by PWs.2 to 4. Therefore, the said contention put forth on the side of the appellants/accused is also sans merit.

38. The seventh contention put forth on the side of the appellants/accused is to the effect that a vital discrepancy has been in existence with regard to injuries sustained by the deceased betwixt the evidence of PWs.9 and 10 and the trial Court has failed to look into the same.

39. As pointed out earlier, PW9 who admitted the deceased initially in Sakthi hospital has found three injuries on her person. But PW10, the doctor who conducted autopsy has found six injuries. Simply because a mere discrepancy with regard to number of injuries sustained by the deceased is in existence in between the evidence of PWs.9 and 10, the Court cannot reject or eschew the consistent and cogent evidence given by PWs.2 and 3 for disbelieving the version of the prosecution.

40. In the instant case, PWs.2 to 4 have cogently and consistently stated in their evidence to the effect that in the place of occurrence all the accused have attacked the deceased by using deadly weapons indiscriminately. Since PWs.2 to

4 are ocular witnesses, their testimonies cannot be discarded on the basis of medical evidence given by PWs.9 and 10.

41. The eighth contention put forth on the side of the appellants/accused is that Ex.P7 has been registered on 19.01.2006 at about 2.30 pm., But the same has reached to Court next day at about 6.50 am., and no explanation has been given on the side of the prosecution and therefore, the entire case of the prosecution is liable to be thrown out.

42. For the purpose of analysing the aforesaid aspect, the Court has to rely upon the decision reported in (2003) 11 SCC 28.[Balram Singh V. State of Punjab] wherein it has been observed as follows:

10. ... we notice that in reality there is no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate. Having been satisfied with the fact that the FIR in question was registered in the morning of 06.05.1990, we do not think that the delay thereafter in communicating it to the Jurisdictional Magistrate on the facts of this case, has really given any room to doubt that the said document (FIR) was created after much deliberations. At any rate, while considering the complaint of the appellants in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case." 43. Further, in (2011) 6 Supreme Court Cases 288 [Brahm Swaroop and another Vs. State of Uttar Pradesh] in paragraph - 23, it is observed as follows: "The prompt lodging of the FIR is proved from the chik report and the statement of the complainant under Section 161 Cr PC, which was recorded immediately after lodging the FIR. Any defect in the preparation of the inquest report by the investigating officer cannot lead to an inference that the FIR was not registered at the alleged time. The FIR contains all the essential features of the prosecution's case including names of eyewitnesses, time and place of incident, names of the victim, motive, name of the accused persons, weapons in their hands and manner of assault. Thus, all these

things lend a seal of assurance not only to the presence of eyewitnesses at the place of the incident, but also to the participation of the appellants in the crime. Courts attach great importance to the prompt lodging of FIR and prompt interrogation of a witness under Section 161 Cr PC as the same substantially eliminates the chances of embellishment and concoction creeping into the account contained therein." 44. From a close reading of the decisions referred to supra, it is made clear that if a First Information Report has been laid promptly without further delay and if there is any delay in sending the same to Court, it would not affect the case of the prosecution. Therefore, viewing from any angle, the said contention put forth on the side of the appellants/accused are not having attractive force.

45. The trial Court after considering the overwhelming evidence available in the present case, has rightly invited conviction and sentence against all the appellants/accused under Sections 341 and 302 r/w 34 of the Indian Penal Code. In view of the foregoing elucidation of both the factual and legal premise, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/accused and altogether the present Criminal Appeals are liable to be dismissed.

46. In fine, these Criminal Appeals deserve dismissal and accordingly are dismissed. The conviction and sentence dated 23.02.2007 passed in Sessions Case No.194 of 2006 by the Additional District and Sessions Court/Fast Track Court not II, Tirunelveli are confirmed. Bail bonds if any executed by the appellants/accused stand cancelled. The trial Court is directed to take effective steps so as to incarcerate the appellants/accused in prison so as to serve out the remaining period of sentence. mj To 1.The Additional District and Sessions Court/ Fast Track Court not II, Tirunelveli 2.The Inspector of Police, Palayamkottai Police Station, Tirunelveli City, 3.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.