

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1839 OF 2009

Raja @ Sasikumar & Anr.

.....Appellant(s)

Versus

State through Inspector of Police
Respondent(s)

....

J U D G M E N T

P.Sathasivam,CJI.

1) This appeal is directed against the judgment and order dated 15.03.2007 passed by the High Court of Judicature at Madras in Criminal Appeal No. 963 of 2005 whereby the Division Bench of the High Court disposed of the appeal by acquitting A4 to A6 and confirmed the order of conviction and sentence dated 27.10.2005 in respect of A1 to A3 passed by the Additional District Sessions Judge, Salem in Sessions Case No. 254 of 2004.

2) The facts and circumstances giving rise to this appeal are as under:

(a) This case relates to the death of one person by name Babu - resident of Kullaveeranpatti, Mettur, Tamil Nadu. One Arumugam@Arupaiyan, who was working as a car driver at Sadurangadi, Mettur, was having an affair with one Chitra (PW-6), who, at the relevant time, was working at Krishna Medicals. One Palanichami, who was working as a car cleaner, too was in love with her.

(b) When Chitra informed Arumugam@Arupaiyan about Palanichami, he confronted the cleaner and when the driver of the car-Senthil (A-7) asked him as to why he confronted him, Arumugam@Arupaiyan started beating Senthil which resulted in enmity between A-7 and Arumugam@Arupaiyan. A-7 also developed grudge against one Babu - the deceased, friend of Arumugam@Arupaiyan, who also helped him during the abovesaid incident and even at one point of time, when both the groups were fighting, A-7 shouted at him that he (A-7) will not spare him at any cost.

(c) On 18.04.2001, when Babu was trying to start his motorcycle, the accused persons, viz., Saravanan (A-1), Raja@Sasikumar (A-2), Natesan@Natarajan (A-3), Karthik (A-4), Chandran@Chandramohan (A-5) and Sakthivel (A-6), intercepted him and prevented him from going further from that spot and A-1 inflicted a sickle blow on his hand. In order to escape, Babu went inside the shed of one Sengodan (PW-3), but A-1, A-2 and A-3 also went inside that shed and inflicted cuts on him indiscriminately as a result of which he fell down and the accused persons fled away assuming that he was dead.

(d) Babu was immediately taken to the Government Hospital, Mettur for treatment by one Radhakrishnan (PW-2) and Sengodan (PW-3) but he succumbed to his injuries. Radhakrishnan (PW-2) lodged a complaint against the accused persons with the Police Station, Mettur which was registered as FIR No. 402 of 2001 under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC').

(e) After investigation, charges were framed against all the above named accused persons including Senthil (A-7) under Section 302 read with Section 34, Section 120-B and Section 342 IPC and the case was committed to the Court of the Additional District Sessions Judge, Salem and was numbered as Sessions Case No. 254 of 2004. The Additional District Sessions Judge, by order dated 27.10.2005, sentenced A-1 to A-6 to suffer rigorous imprisonment (RI) for 6 months for the offence punishable under Section 342 of IPC and imprisonment for life for the offence punishable under Section 302 read with Section 34 IPC along with a fine of Rs. 1,000/- each, in default, to further undergo RI for 3 months. However, A-1 to A-7 were acquitted under Section 120-B IPC and A-7 was acquitted of all the charges.

(f) Being aggrieved of the order dated 27.10.2005, A-1 to A-6 filed Criminal Appeal No. 963 of 2005 before the High Court. The Division Bench of the High Court, by order dated 15.03.2007, disposed of the appeal by acquitting A-4 to A-6 while sustaining the conviction and sentence of A-1 to A-3.

(g) Being aggrieved by the order of the High Court, A-2 and A-3 has preferred this appeal by way of special leave before this Court.

3) Heard Mr. V. Kanagaraj, learned senior counsel for the appellants-accused and Mr. M. Yogesh Kanna, learned counsel for the respondent-State.

Contentions:

4) Mr. V. Kanagaraj, learned senior counsel for the appellants submitted that the evidence of eye-witnesses, viz., PWs 2 & 3, read with the evidence of other prosecution witnesses, creates a doubt about the case of the prosecution, hence, the conviction based on such evidence cannot be sustained. He also submitted that inasmuch as Kasinathan (PW-14) - the Investigating Officer has stated in his evidence that he examined PW-3 on 20.04.2001 and PW-3 in his evidence before the Court contradicted his statement that the police never examined him, the evidence of PW-3 has to be disbelieved in *toto*. He also pointed out that with regard to the actual place of occurrence, the evidence of PWs 2 and 3 contradicts each other, therefore, it is not safe to rely

upon their evidence. He further pointed out that both PWs 2 and 3, could not identify the weapon and this aspect was also not considered by the High Court. He also submitted that as per the evidence of PW-2, he has given only oral complaint which was reduced into writing by the police and was attested by one Maheswaran whereas as per the Investigating Officer (PW-14), PW-2 has given a written complaint and the same was registered and not attested by the aforesaid person. In such circumstance, learned senior counsel submitted that it is not safe to rely upon the case of the prosecution. He also submitted that the prosecution failed to establish the motive, i.e., the love affair by examining Arumugam@Arupaiyan and Palanichami. The said two persons having enmity between them and the deceased alleged to have died on supporting Arumugam@Arupaiyan and the accused persons alleged to have supported Palanichami.

5) On the other hand, Mr. Yogesh Kanna, learned counsel for the respondent-State submitted that the prosecution has fully established the motive for the crime. He also pointed

out that the courts below, particularly, the High Court, rightly relied on the evidence of PWs 2 and 3, who witnessed the incident and convicted the appellants herein. He also pointed out that PW-2, being the author of the complaint (Exh. P-1), there is no reason to disbelieve his statement. He further highlighted that PWs 2 and 3 were the persons who brought the injured to the hospital within 20 minutes after the occurrence and the presence of PW-3 was also proved by marking a copy of the Accident Register dated 18.04.2001 as Exh. P.-18. He finally submitted that due to minor contradictions in the evidence of the prosecution witnesses, the entire prosecution case cannot be thrown out.

6) We have carefully considered the rival contentions and perused the relevant materials.

Discussion:

7) It is not in dispute that out of 7 accused, the conviction relating to A-1 to A-3 was confirmed by the High Court and A-2 and A-3 alone preferred this appeal, therefore, we are concerned about the role and involvement of A-2 and A-3 in the commission of the crime as projected by the prosecution.

Though the prosecution has examined PWs 2 to 5 as eye-witnesses to the crime, the High Court itself has disbelieved the evidence of PWs 4 and 5 and the entire prosecution case rests upon the evidence of PWs 2 and 3. We are conscious of the fact that relying upon the prosecution witnesses, the High Court set aside the conviction of A-4 to A-6 in *toto* and acquitted them. It is also relevant to point out that the High Court took note of the general principle that if the prosecution case is the same against all the accused or with regard to some of the accused on the same set of evidence available on record with reference to any of the accused, then the Court would not be committing any mistake in acquitting all the accused and conversely, if it is possible to do so, namely, to remove the chaff from the grain, the Court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact.

8) It is true that in the earliest information, there was no reference to the presence of PWs 2 to 5. In other words, their names did not find place in the complaint (Exh. P-1). As

rightly observed by the High Court, there is no need to mention all the details graphically in the complaint and it depends upon so many factors such as condition of the injured etc. It is also not in dispute that the incident occurred on 18.04.2001 at 8.20 p.m. Inasmuch as PWs 4 & 5 were examined by the Investigating Officer only on 20.04.2001, there were vast inconsistencies in noting the presence of the accused at the scene of occurrence as well as in the number of assailants at the earliest point of time and the High Court has rightly disbelieved the version of PWs 4 & 5. If there is any tangible and acceptable material from the evidence of PWs 2 and 3 in the earliest information, i.e., the complaint (Exh. P-1), which is believable, there is no reason to reject the case of the prosecution insofar as the appellants are concerned.

9) A perusal of the FIR (Exh. P-19) discloses that the incident occurred on 18.04.2001 at 8.20 p.m. and the information was received by the Police Station, Mettur at 10.00 p.m. on the same day itself and an FIR being No. 402 of 2001 was registered based on the written complaint by

the complainant-Radhakrishnan (PW-2). It is stated that one Arumugam@Arupaiyan was his friend and he was having an affair with one Chitra (PW-6), who at the relevant time was working at Krishna Medicals. Another person, by name Palanichami, who was working as a car cleaner, too was in love with her. It is further stated that Arupaiyan confronted the said cleaner and when the driver of the car, viz., Senthil (A-7) questioned the same, Arupaiyan had beaten Senthil. Based on the said incident, the accused persons, including the present appellants, threatened the deceased and his persons. In the said complaint, PW-2 has made a specific reference about the role of A-1, A-2 and A-3. It is also asserted that it was A-1 to A-3 who inflicted cut injuries on Babu (the deceased). The complainant has also stated that with the aid of one Sengodan (PW-3), he admitted Babu in the Government Hospital at Mettur for treatment but in spite of the same, he succumbed to the injuries. The same has been endorsed by the Inspector, Mettur on 18.04.2001 at 2130 hrs. at Government Hospital, Mettur and a case was registered in Mettur PS Crime No. 402/2001 under Section

302 IPC on 18.04.2001 at 2200 hrs. It is clear from the complaint that the complainant (PW-2) has implicated A-1 to A-3 (A-2 & A-3 are the appellants herein) and specifically stated that they are the persons who inflicted fatal injuries on Babu (the deceased). There was no delay in making complaint and the same was duly registered by the police.

10) Insofar as the evidence of PW-2 is concerned, he is also a resident of Kullaveerampatti in Mettur. In his evidence, he deposed that he knew all the accused persons and on 18.04.2001 when he and Babu (the deceased) were on election duty, they parked their Bullet Motor Cycle in front of Sengodan's Lathe Shed near Navapatti Agricultural Cooperative Bank and, thereafter, they went for the election work. When they returned after completing their work, at that time, suddenly, 5 persons came from the west main road and attacked on the back of Babu. Immediately, in order to escape, Babu ran inside the Lathe Shed of Sengodan (PW-3). In the open Court, PW-2 identified A-2 and A-3 correctly. He further deposed that after inflicting cut injuries to Babu, they ran towards the South of the Lathe Shed.

Thereafter, PWs 2 & 3 went inside the Lathe Shed and saw that Babu was lying in a pool of blood and struggling for life. They took Babu in an auto-rickshaw and admitted him in a Hospital where Doctor informed them that Babu has died. The injuries of all other aspects have been noted in the Accident Register and a copy of the same has been marked as Exh. P-18. Though Shri R. Raju, the Doctor who issued Exh. P-18, i.e. the Accident Register, has not been examined, all the details have been explained by the Doctor who conducted the *post mortem* on the body of the deceased. It is also noted that PW-3 was also present in the hospital along with PW-2.

11) Deposition of Sengodan (PW-3) shows that he was also a native of Kullaveerampatti in Mettur. He also narrated the entire incident implicating A-1 to A-3. He deposed before the court as to how Radhakrishnan (PW-2) came to the spot along with Babu (the deceased) and how he was attacked by A-1 to A-3. He also mentioned that it was Radhakrishnan (PW-2) who took the deceased to the Hospital in an auto-rickshaw along with him.

12) As rightly observed by the High Court, inasmuch as in the earliest document, namely, the complaint, there is a specific reference to the involvement and role of the appellants including A-1 supported by the evidence of PWs 2 & 3 and the name of PW-3 has also been mentioned in the accident register (Ex. P-18), there is no valid reason to reject the evidence of eye-witnesses, viz., PWs 2 & 3. No doubt, there were some variations in the statements of PWs 2 & 3 and the Investigating Officer (PW-14), however, when the variations are negligible about making of the complaint, taking note of the assertion of PWs 2 and 3 and various injuries inflicted on Babu, we concur with the conclusion arrived at by the High Court in accepting their evidence (PWs 2 & 3) on all aspects insofar as A-1 to A-3.

13) Inasmuch as the prosecution has established the motive for the commission of offence, the evidence of PWs 2 & 3 are acceptable insofar as the involvement of A-2 and A-3 in the crime in question is concerned. In view of the presence of PW-3, which is also noted in the Accident Register (Exh. P-18) and of the fact that the contradictions are minor in nature,

we agree with the conclusion arrived at by the High Court. Consequently, we reject all the arguments advanced by learned senior counsel for the appellants.

14) In the light of the above discussion, we do not find any merit in the appeal, consequently, the same is dismissed.

.....CJI.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
AUGUST 22, 2013.

JUDGMENT