

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 636 OF 2010

STALIN @ SATALIN SAMUVEL

...APPELLANT(S)

VERSUS

**STATE REPRESENTED BY THE
INSPECTOR OF POLICE**

...RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO. 639 OF 2010
CRIMINAL APPEAL NO. 496 OF 2012**

J U D G M E N T

B.R. GAVAI, J.

1. The present appeals challenge the judgment dated 19th February 2009 passed by the Division Bench of the High Court of Judicature at Madras, thereby dismissing the appeals filed by the appellants herein and affirming the judgment dated 14th November 2007 passed by the learned Principal Sessions Judge,

Thiruvallur District (hereinafter referred to as “the trial court”), thereby convicting the appellants herein for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short, “IPC”) and sentencing them to suffer life imprisonment. The trial court further convicted the appellants herein under Section 109 read with Section 201, Section 109 read with Section 182 and Sections 120B and 148 of the IPC and sentenced them to suffer rigorous imprisonment for the different periods under the said Sections.

2. The prosecution story, in brief, is as under:

Deceased M.R. Ravi was carrying on real estate business in Yadaval Street, Padi. He also happened to be the Town Secretary of AIADMK party of Ambattur. It is the prosecution case that accused Nos. 1 and 11 also belonged to the same political party. Accused Nos. 12 to 14 were close associates of accused No. 1. It is the prosecution case that deceased M.R. Ravi belonged to one group of the said political party whereas accused Nos. 1 and 11 belonged to the other group. According to the prosecution, they thus developed enmity towards the

deceased. Accused No.1 was arrested in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 and accused No. 11 was arrested in a case under the IPC and they strongly believed that they were arrested only on the instigation of the deceased.

3. According to the prosecution, on 2nd June 2006 at around 10.30 a.m., deceased M.R. Ravi was inside his cabin and Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) were sitting in the office outside his cabin. At that time, six persons came there and enquired about the deceased M.R. Ravi from Palani (PW-2) and Sivalingam (PW-3), who were employees of the deceased. Though the accused persons were informed that the deceased was performing puja, four out of six accused persons forcibly entered into the cabin of the deceased and stabbed him with knives. It is the prosecution case that on seeing this, Kumar (PW-1), in order to save his life, ran from there. Accused Nagoor Meeran (since deceased), who was standing outside with the other accused persons, attempted to

stab Kumar (PW-1). On seeing this, Palani (PW-2) and Sivalingam (PW-3) also ran from there.

4. As per the prosecution case, Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) returned to the office of the deceased M.R. Ravi after five to ten minutes and found that the deceased was still alive. Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) took him to Sundaram Medical Foundation Hospital and admitted him in the Intensive Care Unit (ICU). Despite treatment, deceased M.R. Ravi died on the same day.

5. Total 18 accused were arrested. Accused Nagoor Meeran died in an encounter while being apprehended by the police. Upon completion of investigation, charge-sheet was filed against the accused persons and the case was committed to the Court of Sessions. The accused persons denied the charges and claimed to be tried. Accused Nos. 3 and 13 were absconding and as such, their case was separated. The trial court, vide judgment dated 14th November 2007, convicted the accused persons and sentenced them as aforesaid.

6. Being aggrieved thereby, various appeals came to be filed before the High Court. The High Court, vide impugned judgment dated 19th February 2009, affirmed the conviction and sentence passed by the trial court insofar as accused Nos. 1, 2, 4, 5 and 6 are concerned. The High Court acquitted accused Nos. 7 to 12 and 14 to 18. Being aggrieved thereby, the present appeals are filed on behalf of accused Nos. 2 and 4 to 6.

7. We have heard Dr. Yug Mohit Chaudhury, learned counsel appearing on behalf of the appellant in Criminal Appeal No. 636 of 2010, Shri Siddharth Aggarwal, learned Senior Counsel appearing on behalf of the appellants in Criminal Appeal Nos. 639 of 2010 and 496 of 2012. We have also heard Dr. Joseph Aristotle S., learned counsel appearing on behalf of the respondent-State.

8. It is submitted on behalf of the appellants herein that the conviction is recorded basically on the evidence of Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3), who are alleged to be the eye witnesses. It is, however, submitted that if the evidence

of Syed Jamal (PW-23), who was at the relevant time, working as Sub-Inspector of Police, Korattur Police Station and M. Rangarajan (PW-25), Inspector of Police, Korattur Police Station, Investigating Officer (IO) is considered in correct perspective, it would reveal that the said eye witnesses were not present at the spot. It is submitted that the accused persons are alleged to have been identified in the Test Identification Parade (TIP). It is however submitted that, if the evidence of Malarvizhi (PW-4), the then Judicial Magistrate who conducted the TIP is examined, the same would show that the TIP was totally fallible and as such, the conviction could not have been recorded on the basis of such a TIP.

9. Per contra, Dr. Aristotle submitted that the evidence of all the three eye witnesses, i.e., Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) is consistent. He further submitted that on the basis of the evidence of Sasikala (PW-6), the enmity between the accused persons and the deceased is also brought on record. He further submitted that the other evidence would

also establish that the accused persons had gathered around the office of the deceased.

10. Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) are the eye witnesses. The evidence given by all of them is on similar line.

11. Kumar (PW-1), in his evidence, specifically stated that two persons from North Mada Street, two persons from Yadaval Street and two persons from M.D.H. Road came to see the deceased M.R. Ravi. They went inside the office of the deceased. Palani (PW-2) and Sivalingam (PW-3) were also sitting there in the office. PW-1 stated that the accused persons enquired about the deceased and they were informed that the deceased was performing puja and they cannot meet him. However, the accused persons forcibly entered into the chamber of the deceased and attacked him. PW-1 further stated that thereafter he ran away from there. According to PW-1, when he came back to the office after five minutes, he found the deceased alive. PW-1 took the deceased to Sundaram Foundation Hospital.

12. A perusal of the evidence of Kumar (PW-1) would reveal that, on the next day, i.e., 3rd June 2006, he was called to the Police Station. The police showed him photos of the persons involved in the crime and asked him to identify them. PW-1 identified Nagoor Meeran (since deceased).

13. Kumar (PW-1), in his complaint, referred to six unknown persons committing the crime. Though, he states that he knows the accused, however, he admitted that he has not given any details as to whether the accused persons were tall, short, dark or fair. He further admitted that he has also not given any description as to what clothes the accused were wearing at that time. He further admitted that though the Inspector of Police, Korattur asked him thrice about the identification of the accused persons and the details of the clothes worn by them, he did not give any detail. He further admitted that the photos of the accused persons were shown to him in the Police Station. The evidence of Palani (PW-2) and Sivalingam (PW-3) is to the same effect. Both these witnesses also admitted that the

photos of the accused persons were shown to them in the Police Station.

14. Syed Jamal (PW-23), the then Sub-Inspector of Police, Korattur Police Station admitted in his evidence that he had not seized the blood-stained clothes of the witnesses. He further stated that he did not seize the said clothes since they did not have any alternative dress.

15. Syed Jamal (PW-23) immediately went to the spot after receiving the information in the Police Station. He stated that he had sent the deceased along with his friends, i.e., Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) to the hospital. He admitted that he did not seize the clothes of Kumar (PW-1) since there were no blood stains on the clothes and as Kumar (PW-1) was not available at the place of occurrence. He similarly admitted that the clothes of Palani (PW-2) and Sivalingam (PW-3) were also not seized since they were also not available at the place of occurrence. He admitted that there were various other persons apart from Kumar (PW-1) who had witnessed the incident but he did not make any enquiry with

them. It will further be relevant to refer to the following admission of Syed Jamal (PW-23) in the cross-examination:

“It is correct, if it is stated that I had mentioned in the 5th line of page 2 of the printed F.I.R. “I had sent him to Sundaram Hospital to undergo treatment, with his friends, ***who came there after knowing the information***”.”

[emphasis supplied]

16. Syed Jamal (PW-23) further admitted that when he enquired with Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3), he did not mention anything regarding the identification marks, body structure and clothes of the accused persons.

17. M. Rangarajan (PW-25), the then Inspector of Police, Korattur Police Station is another IO. He also admitted in his evidence that the persons who had accompanied the deceased in the hospital arrived there after coming to know about the incident.

18. A perusal of the evidence of these witnesses would cast a shadow of great doubt as to whether Kumar (PW-1), Palani (PW-2) and Sivalingam (PW-3) were really present at the time of the incident or not. From the evidence of Kumar (PW-1), Palani

(PW-2) and Sivalingam (PW-3), Syed Jamal (PW-23) and M. Rangarajan (PW-25), a possibility of PWs 1 to 3 arriving at the spot after coming to know about the incident, cannot be ruled out.

19. The trial court and the High Court have relied on the TIP conducted by PW-4. It will be relevant to refer to the admission of Malarvizhi (PW-4) in her cross-examination, which reads thus:

“It is correct that in my report I have stated that the policeman of Korattur Police Station took photos and videos for showing to the witness to identify the accused in the lock-up which was objected by the accused Stalin and Vinayagamurthy. It is correct that I had not asked the witnesses as to whether the identified persons were known to them prior to the identification parades.”

20. It will further be apposite to refer to the following admission of Malarvizhi (PW-4) in her cross-examination:

“It is correct that I have not stated at what time the parade commenced and closed. After the completion of the identification parade, when I asked Arikrishnan, whether there were any objections about identification parade he stated that the Investigating Officer and Sub Inspector kept them under custody in Korattur Police Station for eight days for identification of the

witnesses. It is correct that photos and video were taken and Arikrishnan has signed and the other 2 accused also stated the same.”

21. It can thus clearly be seen that the policeman of Korattur Police Station had taken photos and videos for showing them to the witnesses to identify the accused persons in the lock-up which, was also objected by accused No. 2 Stalin and accused No. 3 Vinayagamurthy. Malarvizhi (PW-4) further admitted that when she asked accused No.4 Harikrishnan @ Hari whether there were any objections about TIP, he stated that the IO and the Sub-Inspector of Police had kept them under custody in Korattur Police Station for eight days for identification of the witnesses. She further admitted that the TIP was conducted in an open ground. In our considered view, reliance could not have been placed on such a TIP which is full of lacunas.

22. Recently, this Court, in the case of ***Gireesan Nair and Others v. State of Kerala***¹, observed thus:

“**31.** In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect

¹ (2023) 1 SCC 180

the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept “baparda” to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (*Lal Singh v. State of U.P.* [*Lal Singh v. State of U.P.*, (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and *Suryamoorthi v. Govindaswamy* [*Suryamoorthi v. Govindaswamy*, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

32. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (*Sk. Umar Ahmed Shaikh v. State of Maharashtra* [*Sk. Umar Ahmed Shaikh v. State of Maharashtra*, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (*Chunthuram v. State of Chhattisgarh* [*Chunthuram v. State of Chhattisgarh*, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and *Ramkishan Mithanlal Sharma v. State of Bombay* [*Ramkishan Mithanlal Sharma v. State of Bombay*, (1955) 1 SCR 903 : AIR 1955 SC 104]).

33. It is significant to maintain a healthy ratio between suspects and non-suspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation

to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a *sine qua non* that the non-suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (*Rajesh Govind Jagesha v. State of Maharashtra* [*Rajesh Govind Jagesha v. State of Maharashtra*, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452] and *Ravi v. State* [*Ravi v. State*, (2007) 15 SCC 372 : (2010) 3 SCC (Cri) 730]).”

23. A perusal of the evidence of Malarvizhi (PW-4), Syed Jamal (PW-23) and M. Rangarajan (PW-25) would reveal that none of the aforesaid requisites were followed in the TIP in question. As such, the conviction on the basis of such a TIP would not be sustainable.

24. That leaves us with the alleged recovery of incriminating material at the instance of the accused persons.

25. We find that the said recoveries are also not free from doubt. However, in any case, only on the basis of the alleged recovery, the conviction could not be sustained.

26. From the material placed on record, it also appears that the investigating agency, in the present case, appears to have gone out of the way to create evidence against the accused persons. It will be relevant to refer to the following observations of the High Court made in the impugned judgment:

“Further at the time when the statement of Thanikaivel was recorded by the Judicial Magistrate under Sec.164 of Cr.P.C., he has categorically stated that ***he was tortured by the police to give such a statement, and thus, it would be quite clear that the prosecution had withdrawn those witnesses in order to avoid the situation that if they were examined, it would go against the prosecution.***”

[emphasis supplied]

27. We are of the considered view that the prosecution has failed to prove the case beyond reasonable doubt and the accused are entitled to benefit of doubt.

28. In the result, the appeals are allowed.

29. The judgment dated 14th November 2007 passed by the trial court convicting and sentencing the appellants herein and the impugned judgment dated 19th February 2009 passed by the Division Bench of the High Court, affirming the same are

quashed and set aside. The appellants herein are acquitted of the charges levelled against them. The bail bonds of the accused shall stand discharged.

30. Pending application(s), if any, shall stand disposed of.

.....**J.**
[B.R. GAVAI]

.....**J.**
[VIKRAM NATH]

NEW DELHI;
JANUARY 18, 2023.