State Rep. By Inspector Of Police vs Saravanan & Anr on 14 October, 2008

Author: Mukundakam Sharma

Bench: Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.832 OF 2002

State Rep. by Inspector of Police .... Appellant

versus

Saravanan & Anr. .... Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. By this judgment and order, we propose to dispose of the appeal filed against the judgment and order of the Division Bench of the High Court of Madras, whereby the Division Bench set aside the judgment and order of the learned Additional Sessions Judge, Vellore and acquitted both the accused respondents of all the charges framed against them.

2. However, before we deal with the contentions raised before us in the appeal, it would be necessary to state the facts of the case leading to filing of the present appeal, which are as under:

> The father of the accused respondents is the brother of P.W. 1 and P.W. 6. They inherited certain property which was again divided amongst them. There were two mango trees on one acre of land at Kanililuppai village which belonged to P.W. 6. The father of accused had no share in that property. According to the measurement done both the trees of mango fell within the land of P.W.6. One of the trees had become dead tree. However, before the said measurement could take place the father of the accused respondents sold that tree to one Shanmugam for a sum of Rs. 1,000/-.
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> The occurrence, which gives rise to the present appeal occurred on 01.06.1991. One week prior to the occurrence, P.Ws. 1, 2, 5 and Murugasan (hereinafter referred to as `the deceased') were plucking mango fruits from the aforesaid tree when Janaki, who is mother of the accused respondents, came there and collected some mangoes.

> However P.W. 6 did not allow Janaki to carry the mangoes, so collected by her. The same resulted in a wordy quarrel between P.Ws. 1, 2, the deceased and Janaki. Janaki beat the accused with a plate. Annoyed over that, P.W. 1 attacked Janaki with a stick.

On the evening of 01.06.1991, P.Ws 1, 2, 3 along with deceased and P.W. 5 went to the house of one Kanniammal for weaving work, which is located nine houses away from the house of P.W. 1. At that time, P.W. 4 was cooking in the house. Around 6.45 p.m., accused/respondent 1 and 2 (for short `A1' and `A2' respectively) trespassed into the house of P.W. 1 and damaged the cooking utensils. Frightened by that act of the accused, P.W. 4 informed about this incident to P.Ws. 1 to 3. From the place of weaving, P.W. 1 went back to his house and asked A1 and A2 as to why they damaged the pots. P.Ws. 2, 3, the deceased and P.W. 5 followed P.W. 1 to the house. At that stage, A1, with M.O. 1 attacked on the right side head, left upper arm and left thigh of P.W. 1, who was caught and hold tightly by A2. At the time when P.W. 2 intervened, A2 with M.O. 2 attacked upon him on his head; his right shoulder and right leg knee. The deceased, Murugesan, intervened and A1 stating that he must die and with that, attacked on the back side of his head with M.O. 1. The brain came out. Deceased was bleeding through his nose and mouth. Struck by the aforesaid blow the deceased fell down, upon which A1 and A2 started kicking the deceased. P.W. 3 intervened to prevent A1 from further assaulting deceased. A2, with M.O. 3 - bamboo stick attacked P.W. 3 on his left forehead and shoulder, resulting in the left eye of P.W. 3 getting congested. Thereafter, A1 and A2 ran away from the scene of occurrence.

P.Ws 1, 2 and the deceased were taken by P.W. 5 and two others in a bullock cart to the Government Hospital at Arani. The Medical Officer, who was later on examined as P.W. 10, examined P.W. 1 and found a number of injuries on his person. He also examined P.W. 2 and found a number of injuries on his person as well. P.W. 3 was also examined in the Government Hospital and on such examination a number of injuries were also found on his person. All the injuries found on P.Ws 1, 2 and 3 were recorded in the accident register, which is marked as Exhibit P.12. Intimation, Exhibit P.13, regarding the admission of P.W. 1, P.W. 2 and the deceased in the Hospital was also sent to police station at Arani.

On receipt of the aforesaid intimation, Exhibit P.13, from the Government Hospital the police started investigation and examined P.W. 1 and recorded a statement from him, which is marked in this case as Exhibit P.1. The same stood registered in crime No. 185/91 for offences punishable under Sections 341, 324, 325 and 307 of the Indian Penal Code, 1860 (for short `IPC'). Exhibit P. 26 is the F.I.R. During investigation the investigating officer examined number of witnesses and recorded their statements and also went to the scene of occurrence from where he recovered M.Os. 7 and 8. As the condition of the deceased was serious, he was referred to the Government Hospital at Vellor and on 9.45 p.m. on 01.06.1991, he was admitted in the Government Hospital at Vellor. Deceased succumbed to the injuries sustained by him at 3.50 a.m. on 02.06.1991. On receipt of the aforesaid death intimation, the investigation officer, P.W. 15 altered the section of offence to Section 302 IPC. On conclusion of the enquiry, he submitted a charge sheet as against both the accused persons.

During trial P.W.1, who is father of P.W. 2, P.W. 5 and deceased, as also P.W. 2 to 17 were examined as witnesses. On conclusion of the trial, the learned trial court found both the accused guilty of the offences charged against them. A1 was sentenced to undergo imprisonment for the offence punishable under section 302 IPC and A2 was sentenced to undergo life imprisonment for the offence punishable under section 302 read with Section 34 IPC. They were also sentenced to imprisonment for six months each under Section 427 and Section 448 IPC. A1 was also held guilty under Section 307 IPC and A2 under Section 307 read with Section 34 IPC and sentenced to undergo imprisonment for three years. They were also directed to pay a fine of Rs. 1000/- and in default thereof both the accused were directed to undergo imprisonment for one year additionally. A2, in addition to the abovesaid, was also held guilty under Section 323 and Section 324 IPC and sentenced to undergo imprisonment for six months and one year respectively. All the sentences were ordered to run concurrently.

3. Being aggrieved by the aforesaid judgment and order passed by the trial court an appeal was filed by both the accused before the High Court of Madras, which was heard by a Division Bench of the said Court. The High Court allowed the appeal and set aside the judgment and order of the trial court and acquitted both the accused of all the charges.

4. The present appeal was filed by the State of Tamil Nadu being aggrieved by the order of acquittal passed by the High Court of Madras. We have heard the learned counsel for the parties, who drew our attention to entire evidence existing on record. Having heard the learned counsel appearing for both the parties and having looked into various facts and evidences available on record, we propose to dispose of this appeal by this Judgment.

5. Learned counsel appearing for the appellant brought to our notice the evidence of all the witnesses as also all other relevant documents including the first information report in support of his contentions that the order of acquittal passed by the learned Division Bench of the High Court cannot be upheld and requires to be set aside. Counsel for the respondents, on the other hand, submitted that the order of acquittal does not call for any interference for it takes notice of all the relevant facts and factors, and therefore, the appeal is required to be dismissed.

6. We have carefully gone through the Judgment passed by the Division Bench of the High Court. A bare perusal of the said judgment would indicate that the order of acquittal was mainly based on the fact that there was a delay in sending Exhibit P.26, the formal F.I.R. to the court. The Division Bench also held that there was no clear evidence to prove and establish that it is the accused who caused injuries on the witnesses as well as the deceased. The Division Bench was also of the view that till the deceased died and case was converted into Section 302 IPC, the accused persons were not identified. It was also held by the Division Bench that there was no clear evidence to prove as to who has caused injuries on the witnesses as well as on the deceased. In view of the aforesaid findings, the Division Bench has set aside the order of conviction passed by the trial court.

7. We carefully scrutinized and analyzed the evidence adduced by the parties. There is no denial and dispute to the fact that the deceased died due to the injuries sustained by him. There is also no dispute with regard to the fact that P.Ws 1, 2 and 3 received their injuries during the incident and

they are the eye witnesses to the occurrence. They have specifically stated in their deposition as to how the occurrence had taken place.

8. Before the High Court the stand taken by the respondents was that the evidence of P.W. 1, 2, 3, 4 and 5 should not have been relied upon as they were closely related to the deceased and were interested witnesses. The law is long settled that relationship is not a factor to affect the credibility of a witness, for the mere reason that an eyewitness can be said to be an interested witness, his/her testimony need not be rejected. Most of the times, eyewitnesses happen to be family members or close associates because unless a crime is committed in a public place, strangers are not likely to be present at the time of occurrence. It is more often than not that a relation would not conceal actual culprit and make allegation against an innocent person. Whenever any plea is taken by the accused persons about the interestedness of witnesses, materials have to be placed in that regard. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

9. The theory that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, was repelled by this Court in the year 1953 itself in the case of Dalip Singh v. State of Punjab [AIR 1953 SC 364], wherein it was held as under:

> "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

A similar view was taken in a later decision of this Court in Masalti v. State of U.P., [(1964) 8 SCR 133] wherein this Court observed as follows:

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautions in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10.The principles laid down in the above said cases have been reiterated by this Court time and again. In State of Rajasthan v. Teja Ram, [(1999) 3 SCC 507] this Court further stated that over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. The observations as enumerated in Para 20 are as follows:

> "The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house, the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such a person as a prosecution witness. Otherwise, merely on surmises the court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also."

Moreover, in Amzad Ali v. State of Assam, [(2003) 6 SCC 270], wherein one of was a member (Dr. Arijit Pasayat) this Court stated in clear terms that there is no rule of any presumption that the evidence of a related witness will always be an interested one or that such witness will have only a hostile attitude towards the accused facing trial.

11.The High Court also held that as there were some discrepancies and improvements in the statement of the witnesses, their evidence should not be relied upon. In State of U.P. v. M.K. Anthony, [(1985) 1 SCC 505] this Court has laid down the approach which should be followed by the Court in such cases:

> "10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the

> ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross- examination is an unequal duel between a rustic and refined lawyer....."

Even otherwise, it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

12.In the present case all the injured persons have categorically stated not only the manner in which the incident on the day of occurrence took place but also the incident which occurred on the previous week. It has come in evidence that Janaki was not allowed to carry the mangoes collected by her by PW 6, which resulted in a wordy quarrel between P.Ws. 1, 2, the deceased and Janaki, consequent to which Janaki beat the deceased with a plate and annoyed by the said fact PW 1 attacked Janaki with a stick. The said incident establishes that there was a quarrel going on between the parties consisting of P.Ws 1, 2, 3, the deceased and others as against the accused person and their mother - Janaki. The witnesses have been consistent with regard to the fact that when P.Ws 1, 2, 3 along with deceased and P.W. 5 went to the house of one Kanniammal for weaving work, which is situated nine houses away from the house of PW 1 and PW 4 was cooking in the house, at that time, A1 and A2 trespassed into the house of PW 1 and damaged the cooking utensils. Being so informed by PW 4 to P.Ws 1 to 3, PW 1 came to his house followed by P.Ws 2 and 3, the deceased and PW 5 and around the same time A1 attacked the deceased as also the PW 1 being so caught and held by A2. The deposition of the witnesses, as per record, indicates that all the injuries received by them were caused during the incident by accused persons. The injured witnesses are eye witnesses and therefore there is no reason to rope in some other persons other than the actual culprits. The said evidence could not be shaken and when we examine the factual scenario in the light of the above discussed legal principles we find that the High Court was not justified in coming to the conclusion that it was not proved from the evidence available on record as to who committed the aforesaid crime.

13.Therefore, we have no hesitation in our mind to come to the conclusion that the injuries were caused by the accused persons not only on the person of eye witnesses but also on the person of deceased which resulted in his death and the prosecution has been able to prove its case beyond any reasonable doubt.

14.Having come to the aforesaid conclusion, another question that comes up for our consideration is whether it would be a case punishable under section 302 IPC. It appears from the evidence on

record and the manner in which the occurrence had taken place that there was some altercation between the parties. The accused persons were also not armed with any deadly weapon, and therefore, it could be deduced that when they went to the house of PW 1 and damaged the cooking utensils there was no intention of killing. Accused could kill PW 4 at that stage, which they did not. Rather when PW 1 being followed by P.Ws 2, 3, the deceased and PW 5 came to the house and there was some altercation and exchange of hot words, during that stage the accused gave injuries to PW 1, 2, 3 and also to the deceased. The said injuries were also caused by stick. In the said crusade injuries were also inflicted on the person of A1. Therefore, in our considered opinion, the present case cannot be said to be a case falling under the provisions of Section 302 IPC. Both the accused persons are therefore, convicted under Section 304 Part II instead of 302 IPC and sentenced to undergo rigorous imprisonment for a period of seven years. While coming to the aforesaid conclusion, we are fortified by a decision of this Court in Dharam & Ors. v. State of Haryana [JT 2007(1) SC 299], wherein also under similar circumstances, this Court held that the offence committed by the accused persons would fall within the ambit of Section 304 Part II. In that case the deceased and the accused happened to be blood relations and having regard to the peculiar circumstances of the case in which the incident took place, fatal injury inflicted on the head of the deceased, which was found to be sufficient in the ordinary course of nature to cause death could not be held as an injury intended by the accused persons to cause death or an injury likely to cause death of deceased. The facts, therefore, are almost similar to case in hand and the ratio is fully applicable to the facts of this case.

15.The appeal is partly allowed. The judgment of High Court is set aside but with abovesaid modification. Both the accused are directed to surrender forthwith to serve the remaining sentence.

.....J. (Dr. Arijit Pasayat) .....J. (Dr. Mukundakam Sharma) New Delhi, October 14, 2008