

POSTMAN VENGAISAMY & ORS.

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v.

STATE REPRESENTED BY INSPECTOR OF POLICE & ORS.

(Criminal Appeal No.1234 of 2010)

JULY 24, 2019

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**[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]**

*Penal Code, 1860: s.302 – Fifteen accused – Prosecution case was that there was history of previous attack on complainant party – On the fateful day, all the accused armed with weapons surrounded PW-1, PW-2 and the deceased – A-11 instigated the other accused to cut the victim-deceased into pieces – Pursuant to that, they were attacked whereby A-13 chopped the left hand below elbow of PW-1 whereas A-6 hit left shoulder of PW-2 while the victim-deceased was attacked on several parts of his body with sword by the accused persons – PW-1 and PW-2 escaped from the clutches of the accused – Victim-deceased succumbed to injuries – Trial court and High Court convicted the appellants and other accused persons for various offences – On appeal, held: Though, the argument for the appellants was that PW-1 and PW-2 were introduced witnesses but the lengthy cross-examination conducted on them did not lead to any such inference – Postmortem report showed multiple injuries on the victim-deceased – The oral testimony of material witnesses PW-1 and PW-2 was corroborated by the medical evidence, whereas the motive of taking life of the deceased was made out from the incident – Therefore, the findings recorded by the courts below were plausible findings in law – Some contradictions may have arisen on account of perception of the witnesses and passage of time, but the creditability of the witnesses were not shaken – Therefore, such witnesses were reliable and creditworthy – Since there was a history of earlier attack on the deceased, accused formed an unlawful assembly with a view to take life of the victim-deceased – No reason to interfere with the order of conviction.*

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**Dismissing the appeal, the Court**

**HELD: PW-4 stated that he, along with the victim-deceased, were beaten up by the accused. He further stated that**

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- A he sustained injuries on the face below both the eyes. The statement of PW-5, wife of PW-4 was also to the same effect. The oral testimony of material witnesses PW-1 and PW-2 was corroborated by the medical evidence, whereas the motive of taking life of the deceased was made out from the incident.
- B Therefore, the findings recorded by the courts below were plausible findings in law. Some contradictions arose on account of perception of the witnesses and due to passage of time. But the creditability of the witnesses was not shaken. On the exhortation of A-11, the accused who were armed with sword had raised murdered assault on the deceased and also injured PW-1 and PW-2. Since there is a history of earlier attack on the deceased on April 8, 2003, accused formed an unlawful assembly with a view to take life of the victim-deceased. It is cumulative effect of the evidence led by the prosecution which determines whether unlawful assembly had a common object to commit culpable homicide amounting to murder. [Paras 10-13] [1120-G-H; 1121-A-E]

*Ram Laxman v. State of Rajasthan (2016) 12 SCC 389; Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh & Ors. (2017) 3 SCC 261- distinguished.*

- E *Mahendran v. State of Tamil Nadu (2019) 5 SCC 67 – held inapplicable.*

#### Case Law Reference

- |   |                          |                          |               |
|---|--------------------------|--------------------------|---------------|
| F | <b>(2016) 12 SCC 389</b> | <b>distinguished</b>     | <b>Para 7</b> |
|   | <b>(2017) 3 SCC 261</b>  | <b>held inapplicable</b> | <b>Para 7</b> |
|   | <b>(2019) 5 SCC 67</b>   | <b>held inapplicable</b> | <b>Para 7</b> |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1234 of 2010

- G From the Judgment and Order dated 30.09.2008 of the Madurai Bench of Madras High Court in Criminal Appeal No. 647 of 2007

P. B. Suresh, Vipin Nair, Karthik Jayashankar, Advs. for the Appellants.

- H M. Yogesh Kanna, Ms. Meha Aggarwal, Partha Sarathi, S. Raja Rajeshwaran, Advs. for the Respondents.

The Judgment of the Court was delivered by A  
**HEMANT GUPTA, J.**

1. The present appeal survives only in respect of Accused No. 1 – Postman Vengaisami (A-1), Accused No. 11 – Thalaiyarpandi(A-11) and Accused No. 15 – Vellachamy(A-15),as Accused No. 9 – Rathinettamatiyan(A-9), Accused No. 10 – Kotti @ Kotteswaran (A-10) and Accused No. 12 – Neelamegavannan(A-12) have completed their sentence and had since been released from custody.

2. 15 accused were made to stand trial before Principal Sessions Judge, Virudunagar District at Srivilliputtur. The learned trial court vide judgment dated December 7, 2007 convicted A-1, A-9, A-10, A-11, A-12 and A-15 for the offences punishable under Sections 148, 302 read with Section 149 IPC, whereas A-11 was also sentenced for an offence punishable under Section 506 (Part II) IPC. Thirumeni (A-4) and Neelamegam @ Valadukai Neelamegam (A-14) died even before framing of charges by the learned trial court, whereas other accused persons i.e. Karnan (A-2), Krishnamurthi (A-3), Lingam (A-5), Poovalingam (A-6), Kesavan (A-7), Ramalingam (A-8) and Arjunan (A-13) were sentenced for a period of one or two years for the offences punishable under Sections 342 and 324 IPC. Such accused did not file any appeal before the High Court as well. However, in appeal by other accused, the High Court confirmed the sentence imposed, except in respect of Poovalingam (A-6), who was convicted for an offence under Section 324 IPC and sentenced to one year rigorous imprisonment.

3. One Chinnaperaiyah (Father of Irulandi – PW-1) is the deceased. The prosecution case is that Baskaran (PW-4) bought goats valuing about Rs.12,000/- from the deceased and has promised to pay the amount after 20 days. On April 8, 2003, the deceased came to Anaikulam to collect the amount from Baskaran. Baskaran (PW-4) sent his wife Rathi (PW-5) to collect the money from the persons to whom he had sold the goats. His wife received the amount but, on her way, she was waylaid by the men belonging to Postman Vengaisami (A-1) and Thalaiyarpandi (A-11) and that they also snatched the money. Baskaran (PW-4), Rathi (PW-5) and deceased Chinnaperaiyahwent to police station to lodge a report but while returning, Baskaran (PW-4), Rathi (PW-5) and deceased Chinnaperaiyah were attacked by the men belonging to Thalaiyarpandi (A-11) due to which they sustained injuries.

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- A The deceased Chinnaperiaiyah belonged to Village Kurunthankulam whereas accused belonged to Nathakulam Village and both the villages are coming under the jurisdiction of Veeracholan Police Station.
4. After taking treatment, deceased and his son Irulandi (PW-1) went to Anaikulam Village on April 25, 2003 to collect money from B Baskaran (PW-4). At that time, Ramar (PW-2), brother-in-law of Baskaran (PW-4), was present. Baskaran (PW-4) told the deceased Chinnaperiaiyah that he will pay the money next day. Therefore, the deceased Chinnaperiaiyah stayed in the house of Ramar (PW-2). It was on April 26, 2003, all the accused armed with weapons surrounded Irulandi (PW-1), Ramar (PW-2) and the deceased Chinnaperiaiyah. At that juncture, Thalaiyariipandi (A-11) instigated the other accused to finish off the deceased. In pursuance of the instigation given by Thalaiyariipandi (A-11), apart from himself, Postman Vengaisami (A-1), Rathinettamatiyan (A-9), Kotti @ Kotteswaran (A-10), Neelamegavannan (A-12), Neelamegam @ Valadukai Neelamegam (A-14) and C D Vellachamy (A-15) attacked the deceased with aruvals (sword) on various parts of his body. Irulandi (PW-1) was also attacked by Arjunan (A-13) with aruval on his left hand whereby Poovalingam (A-6) hit left shoulder of Ramar (PW-2). Irulandi (PW-1) and Ramar (PW-2) went to Veeracholan Police Station at about 9:30 am on April 26, 2003. On the basis of complaint, FIR (Exh. P-13) was lodged for various offences. E Irulandi (PW-1) and Ramar (PW-2) were sent to Thiruchuli Government Hospital for treatment, whereas the FIR was sent to the learned Judicial Magistrate, Aruppukottai.
5. Irulandi (PW-1) and Ramar (PW-2) were medically examined by Dr. Jayakumar (PW-13). After completion of investigation, accused were made to stand trial. Before the learned trial court, the prosecution examined as many as 18 witnesses including Dr. Jayakumar (PW-13), informant and son of the deceased, Irulandias PW-1, Ramaras PW-2, Baskaran as PW-4 and his wife, Rathi as PW-5. On the evidence led, the order of conviction was passed. The High Court relying upon the G testimony of Irulandi (PW-1) and Ramar (PW-2), the injured witnesses as well as the evidence of Baskaran (PW-4) and Rathi (PW-5), maintained the order of conviction and sentence, as mentioned above.
6. Briefly, there are two incidents, one on April 8, 2003 in which Baskaran (PW-4) and Rathi (PW-5) and the deceased Chinnaperiaiyah H have received injuries and the other on April 26, 2003 in which Irulandi

(PW-1) and Ramar (PW-2) received injuries whereas Chinnaperiaiyah A lost his life.

7. Learned counsel for the appellants argued that the so-called injured witnesses Irulandi (PW-1) and Ramar (PW-2) have been introduced by the prosecution and they have not received injuries in the manner set up by the prosecution. It is contended that the injuries received on such witnesses are simple injuries which are not proved to be inflicted by the accused. It is also argued that all the prosecution witnesses are interested witnesses, therefore, their testimony cannot be believed by the learned trial court and affirmed by the High Court. It is also contended that the statements of material witnesses i.e. Irulandi (PW-1) and Ramar (PW-2) are contradictory, therefore, in the absence of corroboration of the evidence of such witnesses, their statements cannot be relied upon. Reliance is placed upon the judgments in *Ram Laxman v. State of Rajasthan*<sup>1</sup> to contend that the statements of Irulandi (PW-1) and Ramar (PW-2) cannot be split to grant benefit to some co-accused while maintaining conviction of others when all accused stand on the same footing and deserve parity. Learned counsel also relied on *Najabhai Desurbhai Waghv. ValerabhaiDeganbhai Vagh & Ors.*<sup>2</sup> to submit that the prosecution has failed to prove common object to commit a murder on the basis of evidence led, therefore, conviction of the appellants with the aid of Section 149 is not tenable. Reliance is also placed upon in the case of *Mahendran v. State of Tamil Nadu*<sup>3</sup>. In the said case, it was held that though the maxim “*falsus in uno, falsus in omnibus*” has no application in India but the rule of caution is required to be applied while examining the statement of witnesses whose part statement is not found to be truthful.

8. We have heard learned counsel for the parties and find no merit in the present appeal.

9. Irulandi (PW-1) has deposed that, on April 26, 2003, he along with his father Chinnaperiaiyah and Ramar (PW-2) were on their way to Anaikulam, when they were surrounded by accused persons who were led by Thalaiyarpandi (A-11) and armed with swords. Thalaiyarpandi (A-11) exhorted other accused to cut the deceased in pieces as planned. It is thereafter, Vengaisami (A-1) chopped up right elbow of his father

<sup>1</sup> (2016) 12 SCC 389

<sup>2</sup> (2017) 3 SCC 261

<sup>3</sup> (2019) 5 SCC 67

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- A but he was immobilized by Karnan (A-2), Krishnamurthi (A-3) and Thirumeni (A-4) whereas Lingam (A-5), Poovalingam (A-6), Kesavan (A-7) and Ramalingam (A-8) immobilised Ramar (PW-2). Rathinettamatiyan (A-9) chopped the right hand wrist of his father by sword, Kotti @ Kotteswaran (A-10) chopped the right side forehead of his father, Thalaiyarpandi (A-11) hit left side rib of his father, whereas Neelamegavannan (A-12) hit in the right side of the back side of his father. Chinnaperiyayah died at the spot. Irulandi (PW-1) and Ramar (PW-2) escaped from the clutches of the accused, then Arjunan (A-13) chopped the left hand below elbow of Irulandi (PW-1) whereas Poovalingam (A-6) hit left shoulder of Ramar (PW-2). Though, the argument of learned counsel for the appellants is that Irulandi (PW-1) and Ramar (PW-2) are introduced witnesses but the lengthy cross-examination conducted on them does not lead to any such inference. Dr. Jayakumar (PW-13) has examined Irulandi (PW-1) and Ramar (PW-2) on April 26, 2003, the same day when Chinnaperiyayya lost his life.
- B Chinnaperiyayya, whose postmortem report is Ex.P-28, shows that multiple injuries were noticed by the Doctor. Such injuries corroborate the oral testimony of Irulandi (PW-1) and Ramar (PW-2). Ex.P-29 is the report in respect of injuries suffered by Irulandi (PW-1) measuring 6x1x½ cm near left hand. He has also provided medical report (Ex.P-30) on Ramar. He stated that Ramar has sustained the following injuries:
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- E “1. Wound on the left bullocks. The pain was stated by patient swelling on the right fact. Pain felt not welling to get treated as influent treated as out patient.
- F 2. At the right ankle pray was taken and found that right Kibula Bone was broken the said injury was termed as severe injury. Certificate issued the same is accident report Ex.P.30.”
- G 10. Baskaran (PW-4), in his statement, also confirmed the incident of April 8, 2003. He stated that he, along with Chinnaperiyayah, were beaten up by the accused. He further stated that he sustained injuries on the face below both the eyes. The statement of Rathi (PW-5), wife of Baskaran (PW-4), is also to the same effect.
- H 11. The oral testimony of material witnesses Irulandi (PW-1) and Ramar (PW-2) is corroborated by the medical evidence, whereas the motive of taking life of the deceased is made out from the incident which happened on April 8, 2003. Therefore, the findings recorded by the courts below are plausible findings in law.

12. In **Ram Laxman**'s case, the Court found that the High Court disbelieved with witness in respect of the other accused but believed such witness in respect of the other accused. That is not a case of some omissions or contradictions of statement but the credibility of witness itself was doubted. Such is not in the present case. Some contradictions arise on account of perception of the witnesses and due to passage of time. But the creditability of the witnesses has not been shaken. Therefore, such witnesses are reliable and credit worthy witnesses.

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13. In **Najabhai Desurbhai Wagh** case, this Court was examining the judgment of acquittal recorded by the High Court when the High Court maintained sentence against only one accused. The appeal by the complainant was against the acquittal of the accused. This Court held that armed with weapons like axe, iron pipe and spear, the common object to commit an offence can be inferred from the weapons used and the violent manner of the attack but the question examined was whether they can be attributed with the knowledge about murder. The present is not such a case. Here, on the exhortation of Thalaiyarpandi (A-11), the accused who were armed with sword had raised murdered assault on the deceased and also injured Irulandi (PW-1) and Ramar (PW-2). Since there is a history of earlier attack on the deceased on April 8, 2003, accused formed an unlawful assembly with a view to take life of Chinnaperiaiyah. The judgments referred to are not applicable to the facts of the present case. It is cumulative effect of the evidence led by the prosecution which determines whether unlawful assembly had a common object to commit culpable homicide amounting to murder.

14. in **Mahendran**'s case, reiterating the well-established principle that follows "*falsus in uno, falsus in omnibus*" has no application in India and is not a rule of law. Therefore, even if some part of the statement is found to be unproved, entire testimony of witnesses cannot be rejected.

15. In view thereof, we do not find any error in the judgment of conviction and sentence recorded by the High Court. Accordingly, the appeal is dismissed. However, the appellants are granted three months' time to surrender before the competent court.