

Sevi and Another

Vs

State of Tamil Nadu and Another

Koodakkal Karian Alias Alagappan and Others

Vs

State of Tamil Nadu and Another

Criminal Appeals Nos. 15 and 147 of 1976

(O. Chinnappa Reddy, Baharul Islam JJ)

03.03.1981

JUDGMENT

CHINNAPPA REDDY, J. -

1. Criminal Appeal 15 of 1976 is under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, and Criminal Appeal 147 of 1976 is an appeal by special leave. The five appellants in the two appeals and three others were tried by the learned Additional Sessions Judge of Salem and acquitted of offences under Sections 148, 302, read with Section 34, IPC and other cognate offences. On an appeal by the State of Tamil Nadu the High Court of Madras confirmed the acquittal of accused 3, 5 and 7 and convicted the present appellants (accused 1, 2, 4, 6 and 8) under Section 148, Indian Penal Code. The High Court also convicted A-1 and A-2 (appellants in Criminal Appeal 15 of 1976) under Section 302 read with Section 34 and accused A-4, A-6 and A-8 (appellants in Criminal Appeal 147 of 1976) under Section 307, Indian Penal Code. The case of the prosecution briefly was that there was enmity between the Vanniars and Naickers of Kottaiyur village in regard to the management of Mariamman temple. The accused, all of whom are closely interrelated, belong to the Naicker group while most of the prosecution witnesses belong to the group of the Vanniars. On September 4, 1972, at about 6 p.m. PW 1 was returning home from his field while PW 2 was going to his field and coming from the opposite direction. Accused 4 and 5 were going ahead of PW 1 at a distance of about 30 ft. They were indulging in abuse of the villagers. PW 2 questioned A-4 why he was indulging in such abuse whereupon A-4 picked up a stone and hit PW 2 on the left side of the head. PW 2 fell down shouting "Ayyo, Appa, I am dying". The two accused then ran away. PW 1 chased A-4, who ran to the house of his father-in-law and hid himself inside the house. PW 1 then proceeded to the house of PW 2, who had been injured by the stone thrown by A-4. When he was at the house of PW 2 the deceased Alagappan and PWs 3, 4 and 5 came there. The deceased asked all of them to go with him to question A-4 why he had beaten PW 2 with a stone. When they had reached the manure pit situated on way, the eight accused came there. A-5 caught hold of PW 3 and A-6 stabbed him on the right side of the back. The deceased said, "What is this injustice". A-3 caught him and A-2 stabbed the deceased on the left flank. A-1 also stabbed him once on the left side and again on the right side. A-7 caught PW 4 and A-4 stabbed him on the left shoulder. A-4 stabbed again 4 or 5 times. A-6 caught PW 5 and A-8 stabbed him on the right flank. Thereafter all the eight accused ran away. PW 1 ran from the scene of occurrence

towards his house. He met PW 9 on the way, told him about the occurrence and asked him to go to Kaveri Palayam, a village three miles from Kottaiyur, and telephone to the police. PW 9 accordingly went to Kaveri Palayam and asked PW 10 to telephone to the police that some persons of his village had been stabbed by other persons of the village. PW 10 accordingly telephoned to the Police Station At Kolathur. The Sub-Inspector of Police, PW 15 on receipt of the telephone message proceeded to Kottaiyur village, taking with him the FIR book, hospital memo book etc. At Kottaiyur he found PWs 2 to 5 in an injured condition and the deceased dead. He arranged to send PWs 2 to 5 in a lorry to Mettur Hospital and between 9.30 p.m. and 10 p.m. he recorded the complaint of PW 1 which he registered as the first information report. The Inspector of Police PW 16 arrived in the village at 2.30 a.m. and took over the investigation. After completing the investigation a charge-sheet was laid against eight accused.

2. The learned Additional Sessions Judge noticed certain disquieting features in the case put forward by the prosecution and acquitted the accused. The High Court, on appeal by the State convicted five out of the eight accused in the manner aforesaid.

3. One of the disturbing features of the case is the strange conduct of PW 15 the Sub-Inspector of Police. According to him he was told by PW 10 on the telephone that there was some rioting at Kottaiyur and that some persons were stabbed. He made an entry in the general diary and proceeded to Kottaiyur taking with him the FIR book, the hospital memo book etc. This was indeed very extraordinary conduct on the part of the Sub-Inspector of Police. If he was not satisfied with the information given by PW 10 that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any FIR. But, we have yet not come across any case where an officer in-charge of a police station has carried with him the FIR book. The first information report book is supposed to be at the Police Station House all the time. If the Sub-Inspector is not satisfied on the information received by him that a cognizable offence has been committed and wants to verify the information his duty is to make an entry in the general diary, proceed to the village and take a complaint at the village from someone who is in a position to give a report about the commission of a cognizable offence. Thereafter, the ordinary procedure is to send the report to the police station to be registered at the police station by the officer in-charge of the police station. But, indeed, we have never come across a case where the Station House Officer has taken the first information report book with him to the scene of occurrence. According to the suggestion of defence the original first information report which was registered was something altogether different from what has now been put forward as the first information report and that the present report is one which has been substituted in the place of another which was destroyed. To substantiate their suggestion the defence requested the Sessions Judge to direct the Sub-Inspector to produce the first information report book in the court so that the counterfoils might be examined. The Sub-Inspector was unable to produce the relevant FIR book in court notwithstanding the directions of the court. The FIR book, if produced, would have contained the necessary counterfoils corresponding to the FIR produced in court. The Sub-Inspector when questioned stated that he searched for the counterfoil book but was unable to find it, an explanation which we find impossible to accept. We cannot imagine how any FIR book can disappear from a police station. Though he claimed that relevant entries had been made in the general diary at the station the Sub-Inspector did not also produce the general diary in court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is great force in the submission of the learned counsel for the accused that the original FIR has been suppressed and, in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eyewitnesses are partisan witnesses and notwithstanding the fact that four of them were injured we are unable to accept their evidence in the

peculiar circumstances of the case. Where the entire evidence is of a partisan character impartial investigation can lend assurance to the court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the court to sift the evidence becomes very difficult indeed. Another feature of the case which makes us doubt the credibility of the witnesses is the photographic and somewhat dramatic account which they gave of the incident with minute details of the attack on each of the victims. According to the account of the witnesses it was as if each of the victims of the attack came upon the stage one after the other to be attacked by different accused in succession, each victim and his assailant being followed by the next victim and the next assailant. Surely the account of the witnesses is too dramatic and sounds obviously invented to allow each witness to give evidence of the entire attack. But the witnesses themselves admit in cross-examination that they were all attacked simultaneously. If so, it was impossible for each of them to have noticed the attack on everyone else. One other important feature of the case which remains unexplained by the prosecution witnesses is the injuries found on A-4. According to A-4 the prosecution party came to his house and attacked him and the prosecution party were injured in that incident, suggesting thereby that he acted in exercise of his right of private defence. He, however, excludes the presence of the other accused. Whether his version is true or not, the fact remains that he did sustain some injuries which have remained unexplained. Having regard to all these special features of this case we do not think that the High Court was justified in setting aside the acquittal of the appellants and convicting them. The appeals are, therefore, allowed. The appellants, if not on bail, will be released forthwith. If they are on bail their bail bonds will stand cancelled.

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