

# SUPREME COURT OF INDIA

State rep. by Inspector of Police, Tamil Nadu

Vs.

Rajendran

Crl.A.No.755 of 2001

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

25.11.2008

## JUDGMENT

### **Dr. Arijit Pasayat, J.**

1. Criminal Appeal No. 755 of 2001 has been filed by the State while Criminal Appeal No.756 of 2001 has been filed by the informant.

2. Challenge in both the appeals is to the judgment of a Division Bench of the Madras High Court directing acquittal of the respondents who faced trial for alleged commission of offences punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') so far as the respondents 1 to 4 are concerned and Section 25 of the *Indian Arms Act, 1915* (in short the `Arms Act') so far as respondent Nos. 1, 3 & 4 are concerned. Learned Sessions Judge, Tirunvelli held them guilty and sentenced them to imprisonment for life for the first offence but no separate sentence was imposed for the later offence.

3. Prosecution version as unfolded during trial is as follows: Ruby is the elder sister of P.W.1. Thiraviya Nadar (hereinafter referred to as the `deceased') was her husband. P.W.3 is the mother of P.Ws.1 and 5. P.W.5 was employed as a driver in the Government Transport Corporation. At about 9.00 a.m. on 11-03-1989 when P.W.5 was to catch a bus in the bus stand to go to his village, A2 and two others came there and assaulted P.W.5. who lodged a complaint before the police at the Palayamkottai Police Station. Head Constable, P.W.12 received that complaint at 11.30 a.m. on that day and registered it in Crime No.906/89 for offences punishable under Sections 326 and 506 (II) I.P.C. Ex.P-4 is the printed F.I.R. for that crime. On 14-09-1989 at 10.00 a.m. P.W.5 was coming out of his work place in the company of the deceased. The younger brother of P.W.5 was selling lottery tickets opposite to the work place of P.W.5. A3 assaulted P.W.5 with a cycle chain, which was attempted to be prevented by P.W.5. A1 and A4 were also by the side of A3 at that time. P.W.5 informed the control room of the police over phone and the police arrived at the scene. A1, A3 and A4 ran away from the scene. P.W.5 and the deceased went to the police station at Palayamkotai and gave a complaint to Constable, P.W.6 which was registered by him in Crime No.1016/89 for offences punishable under Sections 341, 323 and 506(II) IPC. Ex.P-5 is the F.I.R. At

12.00 noon on that day, A3 appeared at the police station and gave a complaint, which was registered in Crime no. 1017/89 for offences punishable under Sections 294(B), 323 and 324 I.P.C. P.W.12 registered that complaint and Ex.P-6 is the printed F.I.R.

“The occurrence had taken place on 17-09-1989 at about 6.00 p.m. P.W.1, along with his mother P.W.3 was walking towards their residential colony from west to east. The deceased was coming in the opposite direction. On being questioned, the deceased informed them that he was going to finalise purchase of tender coconuts and he was on his way to Melamuneerpallam for that purpose. Two hundred feet east of that place, the house of A2 is situated. A2, with an aruval and A1, A3 and A4 each with a stick, came there. A2 asked the deceased as to the whereabouts of P.W.5. The deceased replied that P.W.5 had gone to Madras. Thereafter A3 and A4 stated that it is the deceased, who always comes in support of P.W.5 and his family and therefore he must be finished off. Immediately A2 attempted to cut the deceased with an aruval, but the deceased ran towards south. All the four accused chased him. Behind the house of one Athiappan @ Muthiah, the deceased was surrounded by all the four accused. A2 attacked on the head of the deceased with "aruval". Thiraviya Nadar thwarted that attack with his left hand but that attack landed on his left elbow. A1, with a metal tipped stick, stabbed on the right side chest of the deceased. A4 stabbed on the left side back of the deceased. They stabbed him indiscriminately. Thiraviya Nadar fell down on the spot and all the accused persons ran away with weapons of offence. Thiraviya Nadar died. P.Ws.2 & 3 had seen the occurrence. P.W.2 is a neighbour of P.W. 1. P.W.1 went to Munneerpallam Police Station to give a complaint. M.O. 1 is the weapon of offence in the hands of A2 and M.O.2 is the weapon of offence in the hands of A 1. Thiraviya Nadar was wearing a white colour shirt at the time of assault and the entire shirt became blood stained. M.O.3 is the shirt and M.O.4 is the lungi worn by him. After completion of investigation, charge sheet was filed. As the accused persons pleaded innocence, trial was held.

The trial court found the evidence of the eye witnesses 1 and 3 to be cogent and credible and held the accused persons guilty as aforesaid. Before the High Court the primary stand was that there was serious doubt as to preparation and registration of the Ex.P1, it was pointed out that Ex.P1 came to be registered around 7 P.M. on 17.9.1989 at the police station which is hardly 2 k.m. away from the scene of occurrence. According to prosecution, the occurrence had taken place on 17.9.1989 at about 6 P.M. But Ex.P1 according to PW7 was sent at 3.45 a.m. on 18.9.1989 alongwith P18, the inquest report. The names of PWs. 2& 3 were not found mentioned in the inquest report. Therefore, it was submitted that the preparation of Ex.P1 is shrouded in mystery. The High Court noted that the evidence offered by the prosecution against the accused was that the deceased was always in the company of PW 5 and whenever PW 5 was in trouble, the deceased used to help him. A reference was made to Ex.P5, information that is the FIR in Crime No. 1016 of 1989. There was an earlier FIR Ex.P4 in Crime No. 355 of 1989. According to prosecution, when Ex.P5, information was lodged by PW5, deceased was in his company and both of them went to the police station. According to the High Court Ex. P5 does not disclose

the presence of the deceased at or about the time when PW 5 was sought to be attacked by the accused. High Court observed that except oral evidence of PWs. 1 & 3 that PW 5 was always found in the company of the deceased, there was no other legal material on record. The omission to mention about the presence of the deceased in the company of PW 5 when he lodged Ex.P5- information with the police was found to be a suspicious circumstance. It was observed that the motive ascribed was very weak. It was further noted that there was an element of doubt as to why A2 would ask the deceased about the whereabouts of PW 5. Evidence shows that the deceased answered by stating that PW5 has gone to Madras. High Court was of the view that some material should have been brought on record to show that PW 5 was not actually in town and had gone to Madras or any other place. The High Court thereafter came to the conclusion which according to us, is totally absurd that it was not possible to infer from the evidence of PW5 that he had gone to Madras and, therefore, the very question by A2 to the deceased and the answer that came out appears to be artificial. Probably, according to the High Court the prosecution wanted to have a platform from which they wanted to develop their case. It was also found that there was considerable delay in sending Ex.P1 to P7 to the court. It was therefore held that the credibility of Ex.P1 to P7 were in serious doubt and therefore the prosecution case was vulnerable.

Additionally, it was held that certain partly digested food articles were found in the stomach of the deceased. According to the High Court, evidence should have been led to show as to at what point of time the deceased took his last meal.

It was also held that the evidence of PWs 1 & 3 shows that they could not have been present at the place of occurrence as the investigating officer had not examined anybody to conclude that PW 1&3 were present at the spot of occurrence. It was also noted that in the inquest report, the name of PW 3 was not there and, therefore, he was not present. Accordingly, as aforesaid, the acquittal was directed.”

4. Learned counsel for the State submitted that the conclusions of the High Court are not only contrary to evidence on record but also are based on surmises and conjectures. There was really no delay in sending the FIR and/or inquest report to the court. The suggestions given by the accused probabilised the presence of the eye witnesses. It was indirectly accepted in the cross examination that A1,A3 and A4 repeatedly stabbed the deceased with velsticks but the suggestion was that the witnesses had not counted the number of times the stabs were given by A1, A3 and A4. The reason why the documents reached magistrate's court late has been explained by PW 8 whose evidence has not at all being discussed. So far as the inquest report is concerned, it is not necessary that names of all the witnesses should be mentioned. Even otherwise the name of PW 1 has been specifically noted. That was sufficient. So far as the partly digested food is concerned, the doctor has categorically stated that in the absence of the time when the last meal was taken, it could not have been inferred. The doctor has categorically stated that the time of death was the time as stated by the eye witnesses.

5. In response, learned counsel for the respondent submitted that there was partly digested food as found by the doctor PW 10. The inquest report does not show the presence of PW 3, so, in any event PW1 whose name has been stated becomes the solitary witness. The foundational facts are in doubt and the view taken by the High Court is a possible view and so there is no scope for interference as the High Court has considered the totality of the circumstances and there was manipulation of times.

6. To begin with, we find the High Court's judgment is full of abrupt conclusions and some times contrary to the evidence on record. The High Court has considered certain factors to be material whereas in fact they are not so. For example the non-mention of the name of the deceased in the company of PW 5 in Ex.P5 has been considered to be a vital omission. No basis for such a conclusion has been indicated. There was nothing to discard the evidence of the eye witnesses on the ground that material should have been shown to show that PW 5 was actually not in town and had gone to Madras or any other place. It is surprising that the High Court rests its view on a totally unfounded conclusion that the question put by A2 and the answer by PW5 appear to be artificial. So far as the delay in sending Ex.P1 and P2 is concerned, the evidence of PW 8 is clear and cogent as to why the document reached the court late. There is not even any discussion as to why the explanation given was not acceptable. So far as the presence of partly digested food is concerned, the High Court came to a conclusion on purely surmises that it can be reasonably presumed that the deceased had taken food before the occurrence had taken place and the presence of food particles postponed the time of occurrence. It again came to an abrupt and absurd conclusion that probably the time of occurrence could have been fixed after 7.30 or 8 PM on the day in question. The High Court came to another erroneous conclusion that PW 8 had carried Ex.P18. The material on record clearly shows that it is not really so. The conclusion that the investigating officer should have examined somebody else to conclude that PWs 1 and 3 were present at the scene of occurrence is legally unsupportable. As rightly submitted, the inquest report need not contain the names of all the witnesses. In any event the name of PW 1 was stated. There is no discussion as to in what manner the evidence of PWs 1 & 3 suffered from any infirmity. The High Court seems to have been obsessed with the idea that there was alleged delay in dispatch, casting doubt on authenticity of the FIR, the inquest report. Conclusions arrived at are totally without foundation. The High Court's order is indefensible and is set aside.

7. The appeals are allowed. The respondents shall surrender to custody forthwith to serve the remainder of sentence.