

# SUPREME COURT OF INDIA

Sivanmoorthy

Vs.

State Rep.By Inspector of Police

CrI.A.No.584 of 2008

(Harjit Singh Bedi and J.M. Panchal JJ.)

11.11.2009

## ORDER

1. The facts leading to these appeals are as under: On 28th October, 2001, at 8.00 p.m. accused A.1 to A.8 armed with sickles (aruvals) and accused 9 to 15 armed with sticks went to the house of the deceased Seeniappa Nadar and inquired about PW.13 Mariappan, his son. The deceased informed the accused that Mariappan was not present in the house. Annoyed at this answer A.13 Ayyanar Nadar instigated the other accused and all of them attacked the deceased with their weapons killing him on the spot. As per the prosecution story the motive for the incident was the serious animosity between Mariappan Nadar PW.13 on the one hand, and A.13 Ayyanar Nadar accused on the other with regard to the affairs of the Nadar community inasmuch that they represented two different groups in the Committee run by the community. It also appears from the record that even prior to this incident, several incidents had taken place between the parties with complaints inter se, not only in court but even in the police station. The incident in question was witnessed by Sornammal, the wife of the deceased, her daughter P.Chellam (PW.1) who was living in a house about 100 yards away and Muthu (PW.2) the grandson of the deceased. Sornammal then rushed to the police station and lodged the report within a short time. The Investigating Officer (PW.25) also reached the place of incident, made the necessary inquiries and sent the dead boy to the hospital for the post-mortem examination. The post-mortem conducted by Dr. Ramesh (PW.17) revealed the presence of nine incised wounds on the dead body. After investigation PW.25 filed the charge-sheet against A.6, A.7, A.9, A.10 and A.11 and one Paneerselvam, was subsequently charge-sheeted as well. As the complainant was not satisfied with the investigation, she moved the Madras High Court for further investigation in the matter and the High Court by its order dated 11th December, 2001, directed that the Superintendent of Police CBCID (PW.27) to examine the proceedings himself and in case he found that the investigation made by PW.25 was faulty, to further investigate the matter as postulated by Section 173(8) of Cr.P.C. It appears that further investigation was indeed made by PW.27 whereafter he filed a charge-sheet against all the 15 named persons leaving out Paneerselvam the 16th accused. The matter was thereafter brought to trial before the Sessions Judge who by his judgment and order dated 16 th June, 2006, held all the accused (Save A.7 who had died) guilty as follows:

“1. Appellants Convictions under Sentence Awarded Sections.

A-1 to A-6 148,341 and 302 1.One year rigorous A-8 IPC imprisonment of each of the accused for the offence under Section 148 IPC.

2.One month Simple imprisonment for each of them for the offence under Section 341 IPC.

3.Life imprisonment for the offence under Section 302 IPC for each of the accused.

A-9 to A-15 147,341 and 302 1.Six months rigorous Read with 149 IPC imprisonment for the offence under Section 147 IPC for each of the Accused.

2.One month simple imprisonment for the offence under Section 341 IPC.

3.Life imprisonment for the offence under Section 302 read with 149 IPC for each of the accused.

A-13 323 IPC Six months simple imprisonment for the offence under Section 323 IPC.”

2. An appeal was thereafter taken by the accused to the High Court. The High Court maintained the conviction of A.1 to A.6 and A.8 and acquitted the other accused. Two appeals have been filed against the order of the High Court, one by the convicted accused in CrI.A.No.584/2008 and the second CrI.A.Nos.767-768/2008 by PW.1 the daughter of the complainant seeking a reversal of the High Court's judgment insofar as some of the accused had been acquitted and as the complainant had died before the evidence could be recorded in the trial Court. Leave has been granted in both these matters and we have heard the learned counsel for the parties today in extenso. Mr. N. Natarajan, the learned senior counsel for the appellants in Criminal Appeal No.584/2008 has raised several issues during the course of hearing. He has first pointed out that Section 173(8) of the Cr.P.C. and the order of the High Court referred to above visualized further investigation in the matter and not re- investigation but it appeared from the record that PW.27 had in fact re-investigated the matter and that in this eventually the evidence collected by him could not be looked into for the purpose of recording a conviction against the appellants. He has also submitted that even assuming that the further investigation was in order but in the background that the investigation made by PW.25 was at complete variance with that made by PW.27, no credence could be attached to the investigations whatsoever and that it was thus open to the appellants to contend that the evidence collected by both the police officers was liable to be disbelieved. He has further pointed out that in the background of the fact that there were as many as 15 or 16 accused there was no way to identify and to adjudicate upon the culpability of one set of accused from the other and as such all the appellants were entitled to acquittal. He has also pointed out that no independent witness had been examined though many were available in the village in which the incident happened and this too cast a doubt on the prosecution story.

3. The learned counsel for the State, Mr. S.Thananjayan has on the contrary, submitted that the matter had been further investigated and a fresh charge-sheet had been filed and a perusal of the charge-sheet would reveal that the statements of witnesses who had been examined by PW.25 had been reexamined as also the statements of several other persons had been recorded in addition to some statements under Sec.164 Cr.P.C. He has, accordingly, urged that in a case where the Court felt (as in this case the High Court did) that the investigation had been side tracked it was always open to the Court to direct further investigation in the interest of justice and could not leave it to the whims of a dishonest police officer to scuttle an investigation. The learned counsel has relied on several judgments in support of his plea as well. It has further been submitted that PW.1 and PW.2 were the daughter and the grandson of the deceased and as their presence was natural, there was absolutely no reason to disbelieve them, the more so, as PW.2 was an educated witness studying for his Law degree. It has also been pleaded that the High Court had in any case separated the grain from the chaff and given the benefit to such of the accused whose presence was felt to be doubtful.

4. Mr. S.B.Sanyal, the learned senior counsel for the complainant-appellant in CrI.A.Nos. 767-768/2008 has pointed out that Section 149 of the IPC had been applied to the case and even assuming that no injury had been caused by the acquitted accused their mere presence was enough on the facts of the case to involve them in the incident. He has also urged that the reasons given by the High Court in acquitting the accused were not justified. We have considered the arguments advanced by the learned counsel for the parties. Section 173(8) read as under: 173(8): Notwithstanding in this Section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report as they apply in relation to a report forwarded under sub-section (2).

5. Sub-section (8) of Section 173 does talks about further investigation. The term Further investigation has, however, not been defined in the Code and must therefore depend on the facts of each case as culled from the record. We find from a perusal thereof that PW.27 had made a comprehensive further investigation, recorded the statements of the witnesses who had already been examined by PW.25 and in addition the statements of several other witnesses as well and their their statements under Sec. 164 of the Cr.P.C. and on reappraisal had filed a fresh charge- sheet. We also notice that the question as to whether this procedure amounted to a further investigation or re- investigation had been taken up by the accused in the trial Court as well, had been discussed comprehensively and had been repelled. When this matter came to the High Court a slight deviation had been made from the stand taken in the Trial Court and the submissions made by the learned senior counsel were recorded verbatim as under: Though P.W.27 continued the further investigation on the basis of the order passed by the High Court, Madras, it cannot be said that PW.27 has conducted a fair investigation and filed the final report.

6. It will be seen from a perusal of the aforesaid quote that there was no criticism as to direction of the further investigation by PW.27 but the point raised was that the said investigation had not been fair. We are, therefore, of the opinion that in fact PW.27 had carried out a further investigation in the matter and not a re- investigation. Mr. Natarajan has relied on several judgments in support of his plea that what had been done was a re-investigation. They are (*K.Chandrashekharan vs. State of Kerala Ors.*<sup>1</sup>), (*Ramachaudhary vs. R.Dodhaya Kuamar and Anr.*<sup>2</sup>), (*Mitha Bai Pasabai Patel Ors. vs. State of Gujarat*<sup>3</sup>) and 332 (Rama Chandran vs. State of Bihar). The judgments merely reiterate the legal position that further investigation and not a fresh re-investigation can be made but, as already mentioned above, the nature of the investigation whether it amounts to a further or a re-investigation has to be seen from the nature of the investigation conducted. On facts we find that the investigation conducted by PW.27 was in the nature of a further investigation.

7. We have also considered Mr. Natarajan's arguments with respect to the finding recorded by the High Court on the evidence. He has first and foremost pointed out that though the trial Court had convicted all the accused, the High Court in appeal had acquitted several of them and it had, therefore, to be presumed that the evidence did not justify a conviction. We notice that necessary investigation into the facts has already been made by the High Court as also by the trial Court. We would ordinarily be hesitant to re-appraise the evidence. We have nevertheless done so and have gone through the statements of the two primary witnesses PW.1 and 3 We find absolutely no reason to disbelieve their statements as fortified by the medical evidence given by PW.17 Dr. Ramesh who had found the following injuries:

“1 A deep cut injury in the centre of the head with fracture of parietal bone on left side size 10cm x 3cm. Blood coming from the fracture site. 2 A cut injury on left parietal region size 5 cm x 3 cm near left ear.

1 A deep cut injury with fracture of occipital bone size 6cmx3cm. Blood coming from fracture site. 2 A cut injury near left eye size 4cmx2cm. 3 A cut injury on left jaw size 4cmx2cm. 4 A cut injury on left shoulder size 3cmx2cm. 5 A cut injury on left forearm size 3cmx2cm. 6 Two cut injury on the back on left side of lower chest size 3cmx1 = cm. 7 A cut injury near right back side ear size 2cmx1cm. Hyoid Bone is intact.”

8. Both the trial court as well as the High Court had found that the eye witnesses' account stands substantiated by the medical evidence. It must also be borne in mind that the factum of animosity between the parties stands admitted. In such a case the real assailants would not be left out although false implication could be a possibility. It is in this background that the High Court has already granted the benefit to some of the accused on the understanding that the medical evidence did not indicate their presence as the acquitted persons were armed with sticks and no blunt weapon injuries had been detected by the doctor.

9. Likewise we are of the opinion that the CrI.A.Nos. 767-768/08 filed by P.Chellam also lack merit for the reasons given above. This court would be hesitant to reverse a finding of acquittal recorded by the trial Court or the High Court where the circumstances are not

palpably wrong and the judgment is not perverse. These adjectives cannot be applied to the judgment of the High Court in the present case.

10. Accordingly, all the appeals are dismissed.

<sup>1</sup>1998(5) SCC 223

<sup>2</sup>2008(5) SCC 413

<sup>3</sup>2009 (6) SCC 346