

# SUPREME COURT OF INDIA

Ponnusamy

Vs.

State of T. N. Rep. by its Inspector of Police

CrI.A.No.1593 of 2007

(P.Sathasivam and Ranjan Gogoi, JJ.)

20.09.2012

## JUDGMENT

### **Ranjan Gogoi, J.**

1. This appeal is directed against the judgment and order dated 27.10.2006 passed by the High Court of Madras whereby the conviction of the accused-appellant under sections 302, 304 (Part II) and 307 of the Indian Penal Code and the sentences imposed by the learned Trial Court have been affirmed.

2. The relevant facts

“The case of the prosecution, in short, is that one Sekhar (deceased No.2) was running a Saw Mill, taken on lease, in which business he was assisted by his brothers Radhakrishnan (deceased No.1) and Rajendran (PW 2). The second accused, Munuswamy, who used to work in the Saw Mill was taken to task by Sekhar for unauthorized sale of some timber from the Saw Mill. The said incident happened on 3.10.2003. According to the prosecution, accused Munuswamy left the place threatening revenge and on 5.10.2003 he came to the house of Sekhar alongwith Ponnusamy (accused No.1) Mailraj (accused No.3) and Madavan (accused No.4).”

3. On 5.10.2003 at about 10.00 A.M. the deceased Sekhar had come out of the Saw Mill to go to his house for coffee. His house was just opposite the saw mill. At that time accused Ponnuswamy assaulted Sekhar with his slippers and instigated the other accused to assault him. It is the prosecution case that, on such instigation, accused No. 3 assaulted Sekhar on his head with a stick; the accused No. 4 assaulted the deceased on his forehead with a brick whereas the first accused stabbed the deceased with a knife. The prosecution has further alleged that on seeing Sekhar being assaulted, Radhakrishnan (deceased No.2) came running whereafter, the second accused caught hold of him and the first accused Ponnusamy stabbed him on his back with the knife. Similar assault on PW 2 and PW 3, who had also come to the

spot, was committed by the first accused Ponnusamy with the knife. According to the prosecution all the injured persons were profusely bleeding and the accused had fled away from the place. Thereafter, the injured persons were brought to the Government Hospital at Thanjayur. On examination, Radhakrishnan was pronounced dead and Sekhar was admitted in the hospital with injuries alongwith PWs 2 and 3. Prosecution had also claimed that at about 3 p.m. of the same day, i.e 05.10.2003 a telephonic information with regard to the incident was conveyed by the police outpost in the Government Hospital at Thanjayur which was received by PW 16 at the Needamangalam Police Station. The said information, according to the prosecution, was entered in the general diary of the police station and brought to the notice of PW 20, Sivagananavelu, Inspector of Police. Thereafter PW 20 reached the hospital at about 4-4.30 p.m. and recorded the statement of Sekhar (Exh.P.37) on the basis of which the FIR (Exh.P.38) was lodged. A requisition was sent to PW 15 (Judicial Magistrate) to record the statements of Sekhar and PW 2 Rajendran and PW 3 Nagaraj in the Government Hospital at Thanjayur. Accordingly, the aforesaid statements were recorded which were subsequently marked as Exh.P.22 and P.23 (dying declaration of deceased Sekhar), Exh.24 and Exh. 25 (statement of PW 3 Nagaraja) and Exh.26 and Exh. 27 (Statement of PW 2 Rajendran). The prosecution had also claimed that after registration of the FIR at about 6.30 p.m., PW 20 commenced his investigation by visiting the place of occurrence at about 7.45 pm in the course of which he prepared a sketch; collected samples of blood stained earth and sample earth and had also recorded the statements of persons acquainted with the offence under the provisions of section 161 of Code of Criminal Procedure, 1973 including the statements of Sekhar (deceased No.1), PW 2 Rajendran and PW 3 Nagaraj.

4. According to the prosecution, on 05.10.2003 itself Sekhar (deceased) , PW 2 and PW 3 were examined by PW 11 Dr. Balasubramanian who was then working as a Casualty Medical Officer in the Government Hospital at Thanjayur. The injuries sustained by the aforesaid persons were recorded in the Accident Register maintained by the Hospital. On the same day Radhakrishnan was also brought before him but by that time he was already dead. Post-mortem of the deceased Radhakrishnan was performed by PW 14 Dr. Vijayalakshmi on the next day, i.e, 06.10.2003. It is also the prosecution case that in the course of investigation the first accused Ponnusamy has made a statement on the basis of which certain recoveries were made including the recovery of a knife which was seized by Seizure List (Exh.P.8 and subsequently exhibited in the trial as material object No.3). Thereafter, at the conclusion of the investigation charge sheet was filed against all the four accused persons under section 302, 304 and 307 of the IPC. The accused persons were tried in the Court of the Learned Sessions Judge, Nagapattinam and each one of them was found guilty of the offences alleged. Aggrieved, the accused persons had filed an appeal before the High Court of Madras. The

High Court by its judgment and order dated 27.10.2006 while maintaining the conviction of the accused-appellant (first accused before the learned trial court) and the sentences imposed, has set aside the conviction and sentence imposed upon the other accused. Aggrieved, the present appeal has been filed by the first accused, Ponnuswamy (hereinafter referred to as 'the accused - appellant' ).

5. We have heard Shri V. Kanagaraj, learned senior counsel for the appellant and Shri B. Balaji, learned counsel appearing for the State.

6. The learned counsel appearing for the appellant has argued that though PW 1, who is the wife of the deceased Sekhar, was examined as an eye witness to the incident she was disbelieved, and rightly, by the High Court. According to the learned counsel the fact that the deceased Sekhar had not mentioned PW 1 as one of the persons present at the place of occurrence though he had clearly mentioned others who were allegedly present would raise a serious doubt with regard to presence of PW 1 at the place of the crime. In so far as PW 2 and PW 3 are concerned, learned counsel has submitted that though in their depositions the said witnesses had named the accused -appellant as the person who had stabbed both the deceased and also PWs 2 and 3, in the statements of the deceased Sekhar and injured PW 3 Nagaraju recorded by the Judicial Magistrate (PW 15) i.e. Exhs. 22-23 and 24-25, the description of the accused-appellant is either by his appearance (short and stout) or by his relationship with the second accused, Munuswamy and not by his name. The aforesaid lacuna, according to the learned counsel, would go to show that neither PW 2 nor PW 3 had identified the accused-appellant to be the person who has caused the stab injuries. It is submitted that PW 4 and 5 were declared hostile and that PW 6, once again, had not named the accused-appellant as the person responsible for the crime but had referred to a short and stout person who had caused the stab injuries. Learned counsel has, therefore, submitted that none of the eye witnesses who were examined by the prosecution are worthy of credence. It has been further contended that Exh.37, i.e. the statement of deceased Sekhar recorded by PW 20, which is the first version of the occurrence, suffers from a serious lacuna affecting its credibility. Learned counsel has pointed out that PW 20 claims to have reached the Hospital at about 4-4.30 p.m. and to have recorded Exh.P.37 at about 4.30 p.m. On the other hand, according to PW 15, i.e. the Judicial Magistrate, he had gone to Ward No. 15 at about 4 p.m. to record the statements of deceased Sekhar and PW 2 and PW 3. He was informed by the staff that the patients had been taken to the operation theatre. Thereafter PW 15 proceeded to the operation theatre where he found PW 2 and PW 3 in the waiting room. Accordingly, the statements of PW 2 and PW 3 were recorded. However, according to PW 15, as the deceased Sekhar was inside the operation theatre undergoing surgery his statement could not be recorded for which reason PW 15 had to come back to the hospital once again at about 9.30 p.m. and it was at that point of time that the statement of the deceased (Ex. P.22 and 23) was recorded. Learned

counsel has pointed out that the two versions given by the prosecution witnesses with regard to the availability of the deceased Sekhar for recording of his statement throws considerable doubt as to whether PW 20 had actually recorded the statement of the deceased Sekhar at 4.30 p.m., particularly, when the said statement (Exh.P.37) was not recorded in the presence of any other person including the Doctor on duty. In the aforesaid circumstances, according to learned counsel, Exh.37 is not credit worthy so as to constitute a sound and safe basis to determine the culpability of the accused-appellant. Pointing out the statements of PW 2 and PW 3 (Exh. 24 25; 26 and 27) learned counsel has pointed out that the said statements do not implicate the accused- appellant herein, in any manner whatsoever. Even the dying declaration of the deceased Sekhar (Exh.22 23) does not refer to the accused-appellant by name but describes the culprit as the short and stocky co-brother of accused Munuswamy (acquitted accused No.2). In these circumstances, according to learned counsel, the involvement of the accused- appellant in the crime alleged has not been proved beyond all reasonable doubt so as to warrant his conviction under Section 302 of the Indian Penal Code.

7. In reply, Shri Balaji, learned counsel for the respondent, has contended that even if the evidence of PW 1 is to be discarded, there is no reason why the evidence tendered by PW 2 and PW 3 should not receive the due consideration of the Court. Learned counsel has submitted that the evidence tendered by PW 2 and PW 3 contains a vivid account of the events that had occurred including the role played by each of the accused in the crime. It is also pointed out that the identity of the accused, including the accused-appellant, had not been an issue at any stage of the trial. The omission of the name of the accused-appellant in the statement of PW 3 recorded by the learned Judicial Magistrate (Ex.26 and 27) and in the Dying Declaration of deceased Sekhar (Ex. P.22-23) is of no consequence. At no point of time the defence had asserted that the identity of the accused- appellant was in doubt. It is further pointed out by the learned counsel for the State that though PW 4 had been declared hostile, the said witness had admitted that all the four accused had assembled in front of the Saw Mill of the deceased Sekhar at the relevant time of the day of the occurrence. That apart, PW 6 had deposed that the accused- appellant who was was 'short and stocky', was seen by him stabbing PW 2 Rajendran, PW 3 Nagaraju and the deceased Radhakrishnan. The evidence of PW 6 with regard to the physical description of the accused-appellant corroborates the description of the accused as narrated in the dying declaration of deceased Sekhar, it is contended.

8. We have carefully considered the rival contentions advanced on behalf of the parties. We have also perused the evidence and other materials on record. The incident occurred at about 10 a.m. on 5.10.2003 in front of the Saw Mill of the deceased Sekhar. From the evidence on record it is clear that the house of the deceased was just across the Saw Mill and the incident occurred when the deceased was going for coffee to his house. Having regard to the place

where the occurrence took place, the presence of PW 1, who is the wife of the deceased Sekhar was, but, natural. Merely because her name was not mentioned by the deceased in his statement (Exh.P.37), though the names of the others who were present were so mentioned, according to us, cannot be a reasonable basis to conclude that PW 1 is not an eye witness to the occurrence. We are, therefore, inclined to take into account the evidence of PW 1 which, properly read, gives a graphic account of involvement of the accused-appellant in the crime in question and corroborates the evidence of PW 2 and PW 3, the other eye witnesses examined by the prosecution. In so far as the lacunae in the evidence of PW 2 and PW 3, as pointed out on behalf of the accused is concerned we are of the view that in a situation where the identity of the accused-appellant was not an issue raised by the defence the evidence of the said witnesses cannot be discarded merely because in their earlier statements, PW 2 and PW 3 had not specifically referred to the accused- appellant by his name. That apart, the part of the evidence of PW 4 which can acted upon by the Court lends a fair amount of support to the prosecution case, namely, that the accused- appellant along with the other acquitted accused had gathered at the place of occurrence at the relevant time of the day of occurrence. The testimony of PW 6 that he had seen the accused-appellant, who was short and stocky, stabbing PW 2 Rajendran, PW 3 Nagaraju and the deceased Radhakrishnan are additional pieces of evidence which gives credence to the prosecution case.

9. The alleged discrepancy in the prosecution evidence (PW 15 and PW 20) with regard to the availability of the deceased Sekhar for recording of his statement at 4-4.30 p.m. of the day of occurrence, as pointed out by the learned counsel for the appellant, in our considered view, does not present any difficulty of resolution. The evidence on record shows that after the two deceased persons and PW 2 and PW 3 were brought to the Government hospital an information was sent from the police out post in the Hospital at Thanjayur to the Needamangalam police station which was received at about 3 p.m. Thereafter the said information was entered in the general diary of the police station and placed before PW 20 who came to the hospital and recorded the statement of deceased Sekhar at about 4.30 p.m. On the other hand, PW 15, the Judicial Magistrate, who was already in the hospital recording the dying declaration of another person, was informed by the duty medical officer at about 3.30 p.m. to record the dying declaration of deceased Sekhar and PWs 2 and 3. Thereafter, according to PW 15, he went to the ward where the injured were admitted but he was told that the patients have been taken to the operation theatre. He, therefore, went to the operation theatre where he found PWs 2 and 3 in the waiting room. At that time the deceased Sekhar was inside the operation theatre undergoing surgery. The Judicial Magistrate recorded the statements of PWs 2 and 3 and came back later to record the statement (dying declaration) of deceased Sekhar at about 9.30 p.m. There is certainly some amount of overlapping in the time mentioned by the two prosecution witnesses, i.e. PWs 15 and 20. However, reference to

such time must be understood having regard to the normal course of human life, namely, that such reference is largely by approximation and not strictly by the hour of the clock. So viewed we do not find any inconsistency in the above part of the prosecution case. We would like to add, in this regard, that even if Exh.P.37 is to be discarded, the prosecution case would still stand established on the basis of the evidence of PWs 1, 2 and 3 read alongwith the evidence of PWs 4 and 6 and the dying declaration of deceased Sekhar recorded by PW 15 which was duly certified by the Doctor (PW 13) as having been made by the deceased in his presence in a fit mental condition.

10. For the aforesaid reasons, we do not consider the present to be a fit case for any interference. Accordingly, we dismiss the appeal and affirm the judgment of the High Court.