SUPREME COURT OF INDIA

S.Subbulaxmi

Vs.

Kumarasamy

Crl.A.No.1737 of 2007

(N.V.Ramana and Prafulla C.Pant,JJ.,)

06.07.2017

JUDGMENT

N.V. Ramana, J.,

1. Aggrieved by the judgment dated 22nd March, 2005 passed by the High Court of Judicature at Madras in Criminal Appeal No. 619 of 1997, the appellant (complainant) filed the present appeal. By the judgment impugned herein, the High Court has set aside the order of conviction passed by the trial Court for the offences under Sections 34, 302 and 506(II) Indian Penal Code, 1860 (IPC) and acquitted the accused.

2. Reason: 2. Brief facts leading to this appeal as discerned from the prosecution case are that the members of victim as well as accused groups are closely related to one another. S. Subbulaxmi who is the appellant/complainant is the wife of the deceased-Subramani. Respondent No 1 (A1) and Respondent No. 3 (A3) are husband and wife. Respondent No. 2 (A2) is the cousin brother of Respondent No.1 (A1). Respondent No. 3 (A3) is sister of the deceased-Subramani. Govindswamy (DW2) is the father of A1. An amount of Rs.40,000/- was handed over to the father of deceased at the time of marriage of appellant with the deceased and the same was deposited in a bank in the names of appellant and the deceased. The father of deceased wanted his son (deceased) and daughter-in-law (appellant) to lend an amount of Rs.40,000/- for the purpose of purchasing some agricultural land in the names of his son-in-law (A1) and his father (DW2). It appears that there was an oral agreement between the deceased and his father to the effect that in exchange of Rs.40,000/-, father of the deceased will transfer three acres of land to his son. After some time, the father of deceased, instead of transferring the promised three acres of land to his son, leased out the same to the father of A1, giving way to strained relations between the deceased and
his brother-in-law (A1) which further aggravated when the deceased started cultivating paddy in the land leased out to the father of A1. Thus, it appears there was a dispute between the parties in respect of this piece of land.

3. In the evening hours of 15th September, 1994, the appellant while cutting grass in her field saw the respondents (A1 to A3) working in a nearby field who created a commotion by

saying to each other that they are not going to spare the appellant's husband Subramani (deceased) since he beat DW 2 (father of A1). Soon thereafter, respondent No. 1 (A1) left the field carrying an iron rod used for removing coconut husk, along with A2 and A3. Worried by their aggression, appellant/ complainant herein followed them, on the way she met PWs 2 and 3 and all of them (Pws 1, 2 & 3) followed the accused party, and at the place of occurrence they saw DW2 sitting on the road and husband of the appellant (deceased) standing at some nearby place. On seeing the deceased, A1 ran towards him and attacked with the iron rod giving a blow on his head and stabbed on the left cheek. A2 and A3 also picked up some cart twigs and continuously attacked on the legs and hands of the deceased. After beating the deceased with iron rod and cart twigs, all the accused threw away their arms and left the scene of offence. After that, PW1 with the help of PW2, took her husband to the Government Hospital, Erode in a taxi where the Doctor (PW10) declared him dead, and informed police. Sub-Inspector of Chennimalai Police Station (PW9) visited hospital, recorded the statement of PW1 (Ext.P1) and registered the same as Crime No. 398/94. Meanwhile, one Ponnusamy (not examined) got admitted father of A1 (DW2) in the same Government Hospital at Erode. The same Doctor who had examined the deceased also examined DW2. Later on, PW9 recorded DW2's statement and registered Crime No. 399/94 against the deceased and undertook investigation in both the cases. The inquest was conducted on the next day and the dead body of the deceased was sent for postmortem.
I.O. seized bloodstained iron rod, cart twigs, bloodstained and normal earth and recorded statements of the doctors. The accused were arrested on 17th September, 1994 from a bus-stand, blood stained dhoti and shirt worn by A2 were seized. All the material objects were sent for chemical analysis. The investigation in Crime No. 399/94 was continued for about three months and finally the proceedings were dropped by PW11 - Inspector of Police for the reason that the accused in that case has already died on 15-09-1994.

4. During the course of trial, to bring home the guilt of the accused eleven witnesses were examined on behalf of the prosecution and two witnesses were examined for defence. After appreciating both oral and documentary evidence, the Principal Sessions Judge came to the conclusion that prosecution has successfully proved the guilt of the accused beyond all reasonable doubt and found the accused guilty. Accordingly, the 1st accused was sentenced to undergo life imprisonment for the offence under Section 302 IPC. The 2nd and 3rd accused were sentenced to life imprisonment for the offences under Section 34 read with Section 302 IPC. All the three accused were further sentenced to suffer rigorous imprisonment for three years for the offence under Section 506(II) IPC. All the sentences were however directed to run concurrently.

5. All the three accused approached the High Court questioning the order of conviction imposed by the trial Court. Having not satisfied with the case of the prosecution, the High Court acquitted all the three accused of all the charges framed against them. Therefore, being unsatisfied with the order of acquittal, the wife of the deceased/complainant is before us in this appeal impugning the judgment passed by the High Court.

6. The learned senior counsel appearing for the appellant/complainant contended that the High Court gravely erred in not taking into consideration the unimpeachable testimony of the eye witness which is cogent, consistent, reliable, corroborating and establishes the guilt of the accused beyond all reasonable doubt. The learned senior counsel argued that the place of occurrence, recovery of weapons used, the chemical analyst's report clearly establish the case of the prosecution and the High Court completely ignored to delve into these material facts.

7. The learned senior counsel further advanced his argument that the injuries on DW2 were clearly explained by the prosecution. The statement of PW2 and the Accident Information Report of DW2 support the case of the prosecution and it is duly corroborated by the evidence of doctor. The interpolation with regard to the time of incident, according to the senior counsel, does not affect the case of the prosecution and that cannot be a ground to acquit the accused.

8. The learned senior counsel summed up his arguments by submitting that the judgment of the High Court is perverse and untenable as it did not take into consideration the unimpeachable evidence of independent witness and that the view taken by the High Court in acquitting the accused is unsustainable in law in the presence of overwhelming evidence in the form of eye witness, observation mahazars, sketches, forensic reports with regard to blood stains on material objects and weapons used by the accused for committing the crime.

9. In support of his contention, learned senior counsel relied upon the decision of this Court in *Sadhu Saran Singh Vs. State of Uttar Pradesh & Ors*[1]*., Hare Krishna Singh & Ors. Vs. State of Bihar*[2] *and Appabhai & Anr. Vs. State of Gujarat*[3].

10. Mr. Karpaga Vinayagam, learned senior counsel appearing for the accused/respondents, supported the impugned judgment. The learned senior counsel for the accused submitted that the two FIRs are created by PW9 and the entire investigation has been conducted in a partisan manner in order to prove the alleged crime against the accused. The police changed the original features of the incident and projected as if there are two different incidents; one at 4.00 p.m. and the other at 5.00 p.m. According to the learned senior counsel, there is only one occurrence and it took place at 4.00 p.m.

11. It is submitted by the learned senior counsel that in fact it was the deceased who raised violence upon DW2 and injured him badly. DW2 never gave a complaint to the police but it is a creation by the police preventing the accused taking the plea of self defence.

12. It is vehemently argued that when Subramani was already declared dead on 15.09.1994 itself in the hospital, how the complaint received from DW2 at 10.00 p.m. was registered by the police at 2.00 a.m. in the night and the police prolonged the investigation till 28.12.1994 and led a perfunctory investigation.

13. The learned senior counsel relied upon *State of Andhra Pradesh Vs. Punati Ramulu & Ors*[4]*., and Ashish Batham Vs. State of M.P*[5]*.*.

14. The learned senior counsel pointed out at the laches of the prosecution case with regard to non-mentioning of the details in the Accident Register as to who brought the deceased to the hospital and what is the time of incident. But, contrary to this, in the Accident Register pertaining to DW2, it was specifically mentioned that Ponnuswamy brought him to hospital and the incident took place at 4.00 PM. Secondly, as per the post-mortem certificate, the deceased sustained 6 serious bleeding injuries on scalp of the head and according to the appellant/complainant, she brought the accused to the hospital and she kept his head on her lap. There is no material to show that her saree was stained with blood nor was there any seizure of the same. Hence, it is a fabricated story.

15. The learned senior counsel summed up his argument by submitting that the police have led a tainted investigation only to help the appellant by implicating A1 to A3 because of their long strained relationship. The statement of DW2 was recorded by the police and admittedly he was severely injured and the police did not obtain any certificate from the Doctor before recording his statement which shows that there is no legitimate enquiry. The police obtained the thumb impression of DW2 on the ground that he sustained injuries which proved to be wrong as DW2's left forearm was fractured. According to him, the entire prosecution story is aimed at only implicating the accused persons in the false case, which the High Court has rightly disbelieved and there is no reason for this Court to interfere. Learned senior counsel relied upon the decision of this Court in *Joginder Singh Vs. State of Haryana*[6].

16. We have heard the learned counsel on either side at length and perused the material available on record in detail. In a case like this where the defence plea is that the prosecution had withheld the actual occurrence and created two separate incidents with tampered and suppressed documents (Ext. P10 and Ext. P14), it was obligatory for the Courts below to ensure whether the prosecution has come up with the true version or merely presented a perfunctory and tailored case to suit its plan of securing conviction of the accused Now, the simple question that falls for our consideration is − whether the High Court was right in disbelieving the prosecution story and acquitting the accused/ respondents to avoid grave miscarriage of justice.

17. It is clear from the material placed before us that the accused as well as victim parties are closely related persons and they were at loggerheads over a land dispute which created strained relationship between them leading to the untoward incident. We have meticulously gone through the Complaint (Ext. P1) of the appellant and the statement of DW2 (Ext. P14) recorded by PW9. It is on record that PW9 in his examination categorically stated that on the day of incident at 7.30 pm, the Head Constable from Erode Government Hospital Outpost Police Station informed him over phone that Subramani (deceased) involved in the scuffle had died in the hospital and DW2 was admitted with injuries. After that, he visited hospital, received complaint (Ext. P1) from PW1 at 8.45 pm and registered it at 12.30 am (Ext. P9). He further deposed that he received complaint from DW2 (Ext. P14) at 10 pm in the hospital

and registered it at 2.00 am on 16.9.1994 (Ext. P10). However, it is somewhat mysterious that though he received complaint from PW1 at 8.45 pm, he did not register it till 12.30 am, akin to this, the complaint from DW2 though received at 10 pm, was not registered till 2.00 am and no explanation is forthcoming for the delay. On the other hand, DW2 made a definite statement that Ext. P14 complaint was never given by him to the police and police did not approach him at all.

18. It is the case of prosecution that Crime No. 399/94 was registered basing on the Complaint (Ext.P14) of DW2 and PW11 investigated the case. Admittedly, PWs 9 and 11 are well aware of the fact that the accused in Crime No. 399/94 has already died on 15-09-1994. The record shows that prosecution has carried on the investigation against the dead person till 28-12-1994 and finally closed the proceedings on the very ground that the accused has already died on 15-09-1994. Though the investigation went on for three moths, the prosecution has failed to bring on record statements of witnesses, if examined, or any incriminating material that was seized.

19. There is also lack of satisfactory explanation from the prosecution about interpolation carried out on Ext.P1 and Ext. P9 changing the time of occurrence from 4 pm to 5 pm. Undoubtedly, this lacuna goes to the root of the case inasmuch as the interpolation in the printed version of First Information Report creates any amount of doubt on the credibility of the investigating agency and leads to the inference that mischief is perpetuated by the investigating officer. At this point, the contention of learned senior counsel for the accused gains momentum that investigating agency deliberately tampered the FIR interpolating the time so as to create a wrong impression that two incidents of scuffle might have occurred.

20. Another circumstance that raises doubt on the prosecution case is also due to the peculiar conduct of PW9 and PW11 who even though were aware of the fact that DW2 with serious bodily injuries was admitted in the same hospital where the deceased was admitted, however, failed to perform their duty as spontaneously as they should in ordinary course. The Doctor (PW10) of Government Hospital deposed that at 6.05 pm on 15.9.1994 he attended the victim DW2 and noted the following injuries (Ext. D2) on his body:

> "1. A crush wound 6 x 2 cms on the right side of the head exposing the skull was seen. There was bleeding in the said wound.
>
> 2. There was a cut injury 2 x 1X> x 1X> cm on the right eyebrow.
>
> 3. A bruise injury was seen on the right jaw. The movement of the jaw was less.
>
> 4. A crush injury 8 x 5 cm was seen on the right side of the head. There was bleeding in the said wound.
>
> 5. A crush injury 5 x 5 cm exposing the skull was seen on the right side of the head.
> 6. A cut injury 3 x 1X> cm exposing the skull was seen on the top of the head.

7. A crush injury 4 x 4 cm exposing the skull was seen on the back of the head.
The Doctor (PW10) further deposed that X-rays of DW2's rib, head and left leg was also taken and there was a doubt of fracture in his leg, hence he was referred to the Coimbatore Government Hospital for further treatment.

21. It appears that police have not taken any interest to shift the injured DW2 to the Government Hospital at Coimbatore. If PW9 really questioned DW2 in the hospital and prepared his statement (Ext. P14), it is expedient and obligatory on his part to take due care, consult the attending Doctor and conscientiously shift the injured to the Government Hospital at Coimbatore on the advice of Doctor (PW10). However, DW2 denies the same and states that police never came to him and there is no reasonable explanation from the prosecution side on this aspect. Rather, the statement of PW11 in this connection is annoying that since the accused in the complaint given by DW2 died, he did not make further enquiry with regard to the particulars of private hospital and Doctor from whom DW2 got treatment. Be that as it may, the injured DW2 got himself admitted in a private hospital, namely, Devi Hospital at Erode on 16.9.1996 where Dr. S. Nataraj (DW1) found the following injuries (Ext. D1) on the body of DW2:

"1. There was a sutured wound 6 cm in length on the left side of the head.

2. There was a sutured wound 2 cm in length on the exterior of the left eye.

3. There was a sutured wound 8 cm in length on the right side of the head.

4. A sutured wound 3 cm in length is seen on the centre of the head.

5. A sutured wound 4 cm in length is seen in the back side of the head.

6. The lower part of the left forearm had swelling in it.

7. An 8 cm sutured wound was seen on the front side of the left leg swelling was there. Movement of the bone was also there. The Doctor (DW1) further deposed that X rays of head, left forearm and left leg were taken and on observation the ulna bone of his left hand was seen to be fractured and both the two bones in the left leg was also seen to be fractured. In his opinion, injuries 1 to 5 abovementioned are simple in nature but injury Nos. 6 and 7 are grievous in nature."

22. Considering the nature of injuries found on the body of DW2, it gives way to a serious doubt in our mind on the credibility of the prosecution theory that according to PW9, DW2 affixed his left thumb impression on the Complaint (Ext. P14) which was registered basing on the FIR (Ext. P10), as he could not sign due to injuries on his hand. Moreover, on an assessment of Ext. P10 and Ext. P14 with the evidence of DW1 and the wound certificate (Ext. D1), it is crystal clear that the reason given by the prosecution for taking thumb

impression in the Complaint is baseless as fracture was found only on the left forearm of DW2 and there was no injury on his right hand with which he could have signed being a literate man. In this context, absence of any reasonable explanation from the prosecution also assumes significance and consequently affects the veracity of the case projected by the prosecution. Added to this, there is no corroborative evidence with regard to the injuries sustained by DW2 with that of Accident Register (Ext.P11). There are also contradictions as to the correctness of injuries sustained by DW2 in Ext. P14, Accident Register (Ext. P11), depositions of PW10 (Doctor), DW1 (Doctor), PW9 and DW2 himself. Thus, considering the circumstances as a whole, we feel that the investigating agency should have acted with more diligence to ensure fulfillment of its solemn duty. But the record predominantly shows that the prosecution has adopted a very casual and callous approach.

23. In the light of the statement given by DW2 to PW9 (Ext. P14), we have come across another glaring defect in the prosecution case. As per the prosecution case, DW2, who has suffered serious injuries on his body including head injuries, has given statement to PW9 (Ext. P14) in the following terms:

> "Due to the injuries sustained by me, I became unconscious. I had been admitted to the Government Hospital Erode for treating of my injuries. After gaining consciousness and on enquiry, I came to know that my son Kumarasamy, my relative's son Palanisamy, my daughter-in-law Vasanthamani, all the three on hearing the information about my sustaining injuries in the quarrel went and hit Mani @ Subramani who was standing in the place where he hit me, on his head and both of his legs and inflicted severe injuries and that he died on way while he was being carried to the Erode Hospital for treatment".

After going through the above part of the complaint, we are quite surprised how a person who fell unconscious owing to serious head injuries gives statement to a police officer implicating his own family members including son and daughter-in-law. Other deviating feature of this testimony is that as per Ext. P14, DW2 sustained injuries only on his left leg and head. But as per prosecution versions and Accident Register (Ext. P11), he suffered injuries on various other parts such as jaw, mandibles, left forearm, chest etc. Undoubtedly, if DW2 had really made the complaint, the injuries mentioned in the Accident Register (Ext.P11) would have found place in the Ext. P14. The careful evaluation of these discrepancies strengthens the doubt in our mind and we find force in the contention of the learned senior counsel for the accused/respondents that Ext. P14 is only the oblivious and unduly creation of investigating agency to magnify the case of prosecution. Having carefully considered this aspect of the matter and due to the doubtful nature of the very circumstance, we are unable to agree with the case put forth by the prosecution.

24. It is also the case of the prosecution that upon hearing the news of deceased attacking DW2, Accused Nos. 1, 2 and 3 rushed to the scene of occurrence and saw DW2 with serious injuries while the deceased was found standing at a distance of 80 feet away and they instantaneously attacked him and left the place. The conduct of accused persons in fleeing

away from the place of offence leaving behind severely injured relative raises a serious doubt on the genuineness of prosecution case. The fundamental and basic presumption one can derive from the circumstance is that when severely wounded DW2 is sitting at the place of occurrence suffering with bodily injuries, as a matter of general human conduct, accused Nos. 1 and 3, being the own son and daughter-in-law of injured DW2, would have run to him for offering first aid and taking appropriate steps for his immediate treatment. But, unlike normal human behavior, the accused, as per prosecution, rushed to the deceased who was still present at the place of offence for one hour after hitting DW2. If the prosecution story is to be believed, the accused after indulging in a fight with the deceased, threw their weapons at the place of offence and ran away ignoring and leaving the severely injured DW2. Evidently, the incident took place on 15.9.1994 and all the accused were arrested from a bus-stand on 17.9.1994. On arrest, a blood-stained shirt and dhoti worn by A2 was recovered but no recovery was made from A1 and A3. It is quite unbelievable that the accused No. 2 from the time of occurrence of the incident on 15.9.1994 till his arrest on 17.9.1994, wore the same blood-stained shirt and dhoti. If that is so, it is also implausible that there were no bloodstains on the clothes of other accused, particularly A1, who as per the evidence of PW1, aggressively participated in the crime.

25. Analyzing the evidence of PW1 (complainant), we doubt the plausibility of her depositions in the facts and circumstances of the case. Undisputedly, as per postmortem report (Ext. P3), the deceased sustained six serious and bleeding injuries on the scalp of his head. PW1 stated that she carried her husband in a car keeping his head in her lap from the place of occurrence to Government Hospital, Erode. The Accident Register (Ext. P12) does not indicate the fact that it was PW1 who brought the deceased to the hospital. As per record, no bloodstains were reported to be found on her clothes, nor was there any seizure. Her conduct in the situation raises doubt that when her husband with severe grievous injuries was struggling for life, she should have first taken him to the nearest hospital and complained at the nearest police station. But, strangely, PW1 neither went to the Chennimalai Government Hospital which is nearest to the place of occurrence and falls on the way to Erode, nor lodged complaint at the Chennamalai Police Station. On the contrary, she opted for a distant Government Hospital and a distant police station. A meticulous examination of her evidence makes it improbable and suffice it to say that she is not a reliable witness basing on whose evidence, the accused can be convicted.

26. Thus, applying our dispassionate judicial scrutiny to the facts and circumstances of the case, we feel that the prosecution story is not trustworthy to show the guilt of the accused. The material on record portrays huge suspicion in our mind and the evidence adduced on record is full of contradictions and basing on such evidence, it is not safe to fasten the liability on the accused. It appears to us that the investigating agency ignored its paramount duty of bringing home the guilt of the accused with probable evidence as admissible under law. Rather, the investigating agency appears to have spent time and mind on creating two occurrences and substantiating the same with the circumstances. The prosecution failed to exonerate itself from the duty of proving the guilt of the accused beyond reasonable doubt.

27. The defence side has also raised certain other discrepancies in the prosecution case, such as the reliability of statement of PW2 (Kandasamy), injuries sustained by DW2 on left eye-

brow, lower jaw, chest, mandible etc. and disparity in the statements of prosecution witnesses, but we feel there is no need to further delve into the matter.

28. In our considered view, the High Court has compelling and substantial reasons to set aside the conviction and sentence awarded by the trial Court against the accused and no interference can be made out with the same. Hence, we are of the considered Opinion that the appeal is devoid of merits and accordingly stands dismissed.

Judgment Referred.

[1]*(2016) 4 SCC 0357*
[2]*(1988) 2 SCC 0095*
[3]*(1988) Supp. SCC 0241*
[4]*AIR 1993 SC 2644*
[5]*(2002) 7 SCC 0317*
[6]*(2014) 11 SCC 0335*