

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.6.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 980 of 1998
and

Crl.R.C.No.558 of 1998

Crl.A.No. 980 of 1998

The Inspector of Police,
K-8 Arumbakkam Police Station,
(Cr.No.1272/96)
Chennai, rep. by
Public Prosecutor,
High Court, Chennai.

... Appellant/Complainant.

1. Ramakrishnan
2. Velu @ Palanivelu
3. Saravanan
4. Doss
5. Devi @ Deivayani

... Respondents/Accused 1 to 5

Crl.R.C.No.558 of 1998

P. Thiruppatty Ammal *सत्यमेव जयते* ... Petitioner/P.W.1.

Vs

1. N. Ramakrishnan
2. Velu @ Palanivelu
3. K. Saravanan
4. R. Dass
5. R. Devi @ Devayani
6. State rep. by
Inspector of Police, (L & O)

K-8 Arumbakkam Police Station,
Chennai. (Cr.No.1272/96)

... Respondents/Accused
Complainant 1 to 5

Prayer: Appeal and Revision against the judgment passed by the learned VI Additional Sessions Judge, Chennai, in S.C.No. 146 of 1997 dated : 20.2.1998.

For Appellant in the appeal : Mr.S.Jayakumar
and for R-6 in the revision. Addl. Public Prosecutor.

For Respondents in the appeal : Mr.M.Venkatraman, S.C. for
And for respondent M/s.V.Krishnakumar for R1.
in the revision. Mr.P.Udayakumar for R2 to R4
Mr.G.Damodaran for R5

For Revision Petitioner : Mr.K.Ethirajulu

JUDGMENT

(Judgment of the Court was delivered by
M.CHOCKALINGAM, J)

Crl.A.No.980 of 1998 has been brought forth by the State aggrieved over the judgment of the learned Additional Sessions Judge, Chennai, in S.C.No.146 of 1997, wherein all the respondents/accused, who were arrayed as A-1 to A-5, were acquitted and Crl.R.C.No.558 of 1998 has been brought forth by P.W.1, who is the wife of the deceased, challenging the very same judgment of acquittal.

2. A-1 to A-5 stood charged under Sections 120(b), 302 read with 34 IPC. and 302 read with 109 IPC., and A-2 to A-4 also stood charged under Sections 341 and 506(ii) IPC. On trial, all these accused were acquitted. Hence, the challenge before this Court by way of an appeal by the State and a revision by P.W.1.

3. The short facts necessary for the disposal of this appeal and revision can be stated as follows:-

(a) P.W.1 is the wife of the deceased and she is living with her husband at Arumbakkam. The deceased was employed as a Peon in Land Ceiling Office, where A-1/first respondent was an Officer. Both the deceased and A-1 used to purchase lands, which were sold in nominal price and thus, they developed their financial conditions. The deceased purchased a plot in No.561, Poonamalle High Road and constructed few shops and in one of which, he was carrying on a S.T.D. booth and also a business of selling audio

cassettes. A-1 was making a demand that he was having a share in the said property. There were occasions, where A-1 made attempts to collect rent from the other tenants in the building and there were civil litigations arose between the parties, due to which, A-1 developed a grudge against the deceased. A-5 was said to be the second wife of A-1. She was also living at Arumbakkam. A-2 to A-4, who were rowdy elements, according to the prosecution, were also residing in the opposite house to that of A-5. She used to give money for their illegal activities and she had their support in the past. Shortly prior to the occurrence, there was an occasion, where P.W.8 saw A-5 giving money to A-2 Rs.20,000/- and telling him to cause the murder of the deceased, which was also witnessed by one Jayapal along with him.

(b) On the date of occurrence, viz., on 18.10.1996, at about 8.30 p.m., P.W.1, as usual, went to the shop of the deceased and she also took food for him in a tiffin carrier. At about 8.30 p.m., she was sitting on a chair in front of the shop and the deceased was standing by her side. At that time, A-2 to A-4, arming with knives and aruvals, came to the scene of occurrence and they uttered that it was the deceased, who wanted to grab the property of Radhakrishnan (A-1) and hence he should be finished off. Saying so, they indiscriminately attacked him with the weapons of crime. This was witnessed by P.Ws.1, 3, 5 and 9, who were standing by the side.

(c) Immediately, P.W.1 proceeded to K-8 Arumbakkam Police Station, where P.W.26, Sub Inspector of Police, was on duty at about 9.30 p.m. A report was received from P.W.1, which is marked as Ex.P-1, on the basis of which, a case in Crime No.1272 of 1996 under Sections 302, 109 and 120(b) IPC. was registered. The printed first information report, which stands marked as Ex.P-30, was despatched to the Court, and the same reached the hands of the Magistrate at 1.00 a.m. in his residence.

(d) P.W.29, Inspector of Police, Law and Order, attached to Arumbakkam Police Station, took up investigation in the case at 22.15 hours, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared an observation mahazar under Ex.P-30 and drew a rough sketch under Ex.P-39. The blood-stained earth and sample earth, M.Os.25 and 26 respectively, were recovered under Ex.P-40 mahazar. On the next day, i.e., on 19.10.1996, between 6.30 a.m. and 10.00 a.m. he conducted inquest on the dead body of the deceased, which was in the mortuary, in the presence of witnesses and Panchayatdars and he prepared Ex.P-41, the inquest report, and after the

inquest, the body was sent through a Police Constable with a requisition to the doctor for conducting autopsy.

(e) Pursuant to the requisition, P.W.24, Tutor in Forensic Medicine attached to Government Kilpauk Medical College, Chennai, conducted autopsy on the dead body of Palanisamy and found the following injuries:-

(1) Head: 12 cm x 4 cm x 6 cm over left side of the head along forehead hairline, left temporal bone, left ear and left mastoid region. Exposing the Brain tissues and pituitary fossa and comminuted fracture of temporal bone (left) with cut in the left Pinna of the ear.

(2) 13 cm x 3 cm x bone deep over center of the head.

(3) 5 cm x 1 cm x bone deep over left parietal region.

(4) 15 cm x 3 cm x bone deep over right side of the forehead

(5) Left side of the Face:

(a) 9 cm x 3 cm x bone deep between left eye and left side of mouth.

(b) 3 cm x 2 cm x bone deep over left cheek.

(c) 10 cm x 3 cm x bone deep over left cheek and lower jaw.

(6) Behind left ear:

(a) 8 cm x 3 cm x bone deep 2 cm behind left ear.

(b) 7 cm x 3 cm x bone deep 1 cm below injury (a).

(7) 14 cm x 3 cm x bone deep over left collar bone.

(8) Over left side of the chest:

5 cm x 1 cm x bone deep over left 7th rib anteriorly along mid clavicular line.

(9) 4.5 cm x 0.5 cm x bone deep over left 8th

rib below injury No.8.

(10) 1 cm x 1 cm x bone deep over left 9th rib below injury No.9.

(11) 4.5 cm x 0.5 cm x cartilage deep along left costal margin.

(12) Stab injuries over abdomen:

I. An oblique stab wound 4 cm x 1 cm x Peritoneum deep through which omentum was protruding out 2 cm below left costal margin.

II. An oblique stab wound 6x2x6 cm over left side of Epigastrium and midline 2 cm below stab wound I.

III. 4.5 cm x 0.25 cm x peritoneum deep oblique stab wound below stab injury II.

The doctor issued the post-mortem certificate under Ex.P-19 and gave opinion that the deceased would appear to have died of cut injuries to head and stab injury to stomach, liver and jejunum.

(f) During investigation, P.W.1 handed over a letter with a cover under Ex.P-43, which was recovered by the investigating officer under a mahazar. A-2 was arrested on 21.10.1996 at 18.00 hours in the presence of witnesses. He made a confession statement in the presence of two witnesses, the admissible portion of which is marked as Ex.P-44, and pursuant to the same, M.Os.27 to 126, Rs.100/- currency notes, were recovered to the tune of Rs.10,000/-. Apart from that, M.Os.16, 17, and 127 to 129 were recovered under mahazar. A-4 was arrested on 22.10.1996 and he volunteered to give a confession statement, which was recorded in the presence of two witnesses, the admissible portion of which is marked as Ex.P-46, and pursuant to the same, he produced M.os.130 to 134, which were seized under a mahazar Ex.P-48. On 24.10.1996, A-3 was arrested and he made a confession statement, the admissible portion of which is marked as Ex.P-51, and pursuant to the same, he produced M.Os.135 to 319, Rs.100/- currency notes, valued to the tune of Rs.18,500/-, under a mahazar. A-1 and A-5 were also arrested on 24.10.1996 and they were all produced before the Court for judicial remand along with other material objects. The investigating officer sent a requisition to the Court to subject the same for chemical analysis and the Court obtained the chemical analyst's

report and the serologist's report under Exs.P-20 and P-21. The final report was filed and the case was committed to the Court of Sessions.

4. In order to substantiate the charges levelled against the respondents/accused, the prosecution examined 29 witnesses, relied on 58 exhibits and 320 material objects. On the completion of evidence on the side of the prosecution, all the accused/respondents were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused flatly denied them as false. No defence witness was examined, but Exs.D-1 to D-4, documents, were marked on its side.

5. After hearing the arguments advanced by both sides, and after making a careful scrutiny of the materials available, the trial Court found all the accused not guilty of the charges levelled against them and hence, acquitted all of them. Aggrieved over the said judgment, the State has preferred the appeal and P.W.1 has preferred the revision.

6. The Court heard the arguments advanced by both sides. The learned Additional Public Prosecutor appearing for the State inter alia would submit that the lower Court has not considered the evidence projected before the Court in a proper perspective, and the lower Court should not have disbelieved the evidence of P.W.1, which was quite natural. The very reading of the narration given by P.W.1 in Court was very consistent to the 161 statement and thus, the lower Court should have believed the evidence of P.W.1. He would further submit that it is true that there were minor discrepancies in the evidence of P.W.1, but this cannot be a reason for disbelieving her evidence, when it was quite natural. Apart from that it is further to be pointed out that P.W.3 has also signed the first information report and added further, the learned Additional Public Prosecutor, that the prosecution has brought forth sufficient evidence as to the conspiracy hatched up between the accused through the evidence of P.W.8, where he has categorically deposed that he saw A-5 giving Rs.20,000/- to A-8 for murdering the deceased and under such circumstances, the finding of the trial Court that there was no direct evidence proving the charge of conspiracy was baseless.

7. Added further, the learned Additional Public Prosecutor, that the prosecution has brought forth sufficient motive for the A-1 to A-5 to do the crime. According to the prosecution, A-5 was the second wife of A-1 and A-1 had got a clear motive against the deceased, since they have raised money in all ways and that they wanted to develop their financial condition by purchasing properties and that A-1 had a grudge over one of such properties purchased by the deceased, and therefore, civil litigations were also pending between the parties. Sufficient evidence thus was brought forth before the lower Court and under such circumstances, the lower Court was not correct in stating that there was no motive for the accused

to commit the murder the deceased. The learned Additional Public Prosecutor further added that the occurrence has taken place at the time about 8.30 p.m., where P.W.1 was present. P.W.1 has clearly made out in her evidence that she went to the shop as usual and she also took the tiffin carrier with food for her husband that day. The learned Additional Public Prosecutor, in assailing the judgment of the lower Court, would further add that the lower Court has disbelieved the evidence of P.W.1 but on filmily grounds and the perusal of the judgment would clearly reveals that they would not stand the scrutiny of law and justice and hence, under such circumstances, the judgment of the lower Court has got to be set aside and the accused/respondents have got to be dealt with in accordance with law.

8. The learned counsel appearing for respondents 1 and 5 would submit that it is true that A-1 and the deceased were working in the same office and they had got some litigations pending between them is also true, but there is no direct evidence for the prosecution to offer that either A-1 or A-5 were available at the time of occurrence and the prosecution came out with a story that it was A-2 to A-4, who have attacked the deceased, only pursuant to the conspiracy hatched up between the parties. The learned counsel would further add that the only witness examined by the prosecution is P.W.8, but the lower Court has rejected the said evidence because it was unnatural and apart from that, according to the prosecution, the amount of Rs.25,000/- was paid in a public place by A-5 to A-2 and it was not the case of the prosecution that A-1 was present either at the time of occurrence or at the time when A-5 gave money to A-2 to cause the murder of the deceased. The learned counsel would further add that according to the prosecution, another witness by name Jayapal has also witnessed that incident of conspiracy but he has not been examined by the prosecution and thus, the very reading of the evidence would show that there was no material available worth-telling to believe the case of conspiracy put forth by the prosecution. The learned counsel would submit that thus, the lower Court has perfectly rejected that part of the case and in such circumstances, in the absence of any proof for conspiracy, the case of the prosecution as against A-1 and A-5 has got to be rejected and the lower Court has also rightly rejected the same and hence, the judgment of acquittal with regard to A-1 and A-5 has got to be sustained.

9. The Court heard the learned counsel appearing for respondents 2 to 4. According to him, the lower Court has correctly disbelieved the evidence of P.W.1. According to the prosecution, the occurrence had taken place at 8.30 p.m. and number of independent witnesses should have been present at that time, but the prosecution has not examined any one independent witness before the lower Court and instead, the prosecution wanted to rely on the evidence of P.W.1 exclusively and the lower Court has also enumerated the reasons for disbelieving the evidence of P.W.1, the uncorroborated testimony.

The learned counsel would further add that according to P.W.1, she took the food that time for her husband in a tiffin carrier and that the tiffin carrier was not seized from the place of occurrence and it is not shown either in the observation mahazar or in the rough sketch and thus, the evidence of P.W.1 that she took food in the tiffin carrier for her husband becomes doubtful and apart from that according to P.W.1, her saree was stained with blood, but the same has not also been recovered. The learned counsel would further add that during cross-examination, P.W.1 could not answer the questions put to her, as to the proceedings pending between the deceased and A-1 and all these circumstances were narrated by the lower Court to disbelieve the evidence of P.W.1 and it is also pointed out that her evidence remains thoroughly uncorroborated and hence, the lower Court was perfectly correct in disbelieving her evidence. Added further, the learned counsel, that insofar as A-2 to A-4 are concerned, according to the prosecution, they have acted pursuant to the conspiracy, but the prosecution has not proved the same in a proper perspective. Under such circumstances, the lower Court has narrated the reasons for acquitting the accused. The learned counsel for the respondents would further made emphasis on the legal principal that once the trial Court, on evidence, found the accused not guilty, unless there are compelling circumstances, the Appellate Forum should not interfere in the findings recorded by the trial Court and hence, the judgment of the trial Court has got to be sustained.

10. This Court has paid its full attention on the submissions made and had made a thorough scrutiny of the entire materials. From the medical evidence, it would be abundantly clear that Palanisamy died out of homicidal violence due to the attack made on him at the time and the place of occurrence, which fact was also proved through the evidence of the doctor, P.W.24, who conducted post-mortem on the dead body of the deceased and who issued Ex.P-19, the post-mortem certificate and hence, the Court came to the conclusion that the deceased, Palanisamy, died out of homicidal violence.

11. In the instant case, the gist of the case of the prosecution is that pursuant to the conspiracy hatched between the respondents, respondents 2 to 4 attacked the deceased on the date of occurrence at 8.30 p.m. indiscriminately in front of the shop of the deceased situate at Poonamallee High Road and the same was witnessed by P.Ws.1, 2, 3, 5 and 9. The prosecution has examined all the witnesses. The first comment made by the lower Court that the independent witnesses were not examined is thoroughly uncalled for. It is not the case where the prosecution did not examine any independent witnesses. It was a case, where the prosecution examined independent witnesses, but they have turned hostile. The Court wants to make a distinction between a case where independent witnesses were not marched and a case where independent witnesses were marched, but turned hostile. In the instant case, independent witnesses were marched, but they turned hostile. Thus, the comment made by the

lower Court that the independent witnesses were not examined by the prosecution cannot be countenanced. Thus, it is true that though P.Ws.2,3,5 and 9 turned hostile, their evidence could not be projected by the prosecution for its help, and what was available is the evidence of P.W.1. True it is she, who is the wife of the deceased and further it is true that her evidence is an uncorroborated testimony. As rightly contended by both the counsels for the respondents, before accepting the evidence of a relative, care and caution must be exercised on the evidence by the Court. In the instant case, the Court has exercised full caution and care and made a thorough scrutiny of the evidence of P.W.1. It is settled principle of law that the Court should look into the evidence not on the quantity, but on the quality. It is also further to be pointed out that it is a case where the Court has to look into whether the evidence of P.W.1, though uncorroborated, could be believed and relied for sustaining conviction. On scrutiny of the evidence in entirety, the Court is of the considered opinion that P.Ws.1's evidence is natural, cogent, convincing and acceptable.

12. The reasons adduced by the learned counsel appearing for the respondents before this Court to sustain the judgment and to disbelieve the evidence of P.W.1 are that it is highly improbable that she was available at the place of occurrence at 8.30 p.m., since the saree, which was blood-stained, worn by P.W.1 at the time of occurrence, was neither produced by her nor recovered by the police, and secondly, the tiffin carrier, in which she took food for her husband, was neither found at the place of occurrence nor recovered by the investigating officer from the spot. Thirdly, she did not know about the pending proceedings between the parties.

13. The Court is of the considered opinion that all these three reasons adduced by the lower Court are not only flimsy, but also unacceptable. Firstly, from the evidence of P.W.1, it could be seen that the tiffin carrier was actually placed by her in the STD booth, which is situated in her shop. The very perusal of the rough sketch would clearly indicate that the occurrence has taken place outside the premises of the STD booth and thus, there is no necessity for recovering the same. P.W.1, in cross-examination, has also admitted that though she had brought food for the deceased in a tiffin carrier, the deceased has not taken the food, which fact was also corroborated through the evidence of the post-mortem doctor that the deceased's stomach was found empty at the time of post-mortem.

14. Secondly, it is true that according to her evidence, the saree was stained with blood-stains, but neither she produced the same, nor the police officer recovered the said saree. But the Court is of the opinion that the non production of the same by P.W.1 or non recovery of the same by the police officers cannot by itself be a reason to disbelieve her evidence.

15. Thirdly, P.W.1 was a woman folk and one could not expect her to express the nature of the proceedings between A-1 and the deceased in a Court of Law and the trial Court has given much importance to these flimsy grounds, which, in the opinion of the Court, should not have been done.

16. The Court is able to see the circumstances, which would speak the truth of the prosecution case. In the instant case, the occurrence had taken place, according to the prosecution, at about 8.30 p.m. and the case came to be registered by P.W.26 on the file of Arumbakkam Police Station, which is situated 1 $\frac{1}{2}$ metres from the scene of occurrence within an hour and the first information report has reached the hands of the Magistrate at 1.00 a.m., i.e., within a period of 2 $\frac{1}{2}$ hours and a perusal of Ex.P-1 would clearly indicate that P.W.1 has given a thorough narrative of the entire occurrence and it is pertinent to point out that it was a case, where no identification parade became necessary, since according to the report given under Ex.P-1 and the evidence of P.W.1 before the Court, she knew all the accused before the occurrence and further, there is no circumstance or reason brought forth by the Court that she roped respondents 2 to 4 in this case. In the above circumstances, the evidence put forth by P.W.1, which stands fully corroborated by the medical evidence, has inspired the confidence of the Court, but the lower Court has failed to consider the said evidence in a proper perspective.

17. Now coming to the question of conspiracy, the Court has to necessarily agree with the decision taken by the trial Court. In the instant case, the prosecution came out with a story by stating that pursuant to the conspiracy hatched up between the accused, A-2 to A-4 attacked the deceased indiscriminately. Insofar as the conspiracy part is concerned, the prosecution has brought forth the direct evidence through P.W.8. A very reading of the evidence of P.W.8, would clearly indicate, as pointed out by the learned counsels for the accused/respondents 1 to 5, that it was highly artificial. According to the prosecution, A-5, who is said to be the second wife of A-1, gave Rs.20,000/- to A-2 in a public place telling him that they should finish off the deceased, which is highly improbable and thoroughly unbelievable and there is no other evidence or any circumstance for the prosecution to infer from the proved fact that there could have been a conspiracy between the other three accused and A-1 and A-5 and hence, the conspiracy part brought forth by the prosecution fails. In the absence of any proof or circumstance, the case of the prosecution as to conspiracy has got to be rejected.

18. Coming to the preposition of law put forth by the learned counsel for the respondents that unless and until there is a compelling circumstance, the findings of the trial Court, on merits, should not be disturbed or rejected. On the settled principles of

law, as put forth by them, the Court has to point out that in a given

case, where the Court is able to see the judgment of the trial Court is unreasonable or when it goes with perverse, the Appellate Court has to necessarily interfere. This is an occasion, where the Court has to follow the decision of the Supreme Court reported in (2003) 8 SCC page 180 (STATE OF RAJASTHAN -vs- RAJA RAM), where the Supreme Court held as follows:-

"The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

19. This Court, on the scrutiny of the judgment under challenge and the materials available, finds that the said judgment is clearly unreasonable, and there are compelling circumstances, which need interference. Accordingly, the judgment of the lower Court in respect of A-2 to A-4 has got to be set aside, since there is sufficient evidence to hold that it was A-2 to A-4, who acted so and they have shared the common intention and they were also present at the place and time of occurrence and indiscriminately cut the deceased and hence, they are liable to be punished under Section 302 read with 34 IPC. awarding life imprisonment. Insofar the other accused are concerned, viz., A-1 and A-5, they are entitled for acquittal and the judgment of the lower Court in their regard is sustained.

20. In the result, A-1 and A-5 are acquitted of all the charges levelled against them. Insofar as A-2 to A-4 are concerned, they stand convicted for the offence of murder awarding life imprisonment. The appeal is partly allowed. In view of the judgment

rendered in the appeal, no further orders are necessary in the revision. Accordingly, the revision is closed. It is reported that A-2 to A-4 are at large. The learned Sessions Judge shall take steps to commit them to prison to serve the remaining period of sentence.

30.06.2005

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The VI Additional Sessions Judge, Chennai.(Take steps to commit the Accused 2 to 4 to Prison to serve the remaining period of sentence as mentioned supra)

2.-do- through the Principal Sessions Judge, Chennai.

3.The Inspector of Police, Arumbakkam Police Station, Chennai.

4.The District Collector,Chennai.

5.The Director General of Police, Madras.

6.The Public Prosecutor, High Court, Madras.

2 ccs to Mr.V.Krishnakumar, Advocate, SR.27024

1 cc to Mr.G.Damodaran, Advocate, SR.27031

gm (co)

dv

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