

A STATE REP. BY INSPECTOR OF POLICE, TIRUCHY

v.

RETTAIMANDAIYAN @ MURUGAN  
(Criminal Appeal No. 656 of 2002)

SEPTEMBER 18, 2008

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[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

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*Evidence Act, 1872 – ss. 3 and 32 – Evidence of eye-witnesses – Reliance upon – Murder of deceased and injury to other over a quarrel – Conviction on basis of evidence of eye-witnesses and dying declaration – However, acquittal by High Court since evidence of eye-witnesses had to be discarded as dying declaration could not be believed – Sustainability of – Held: Not sustainable – High Court should not have discarded the evidence of eye witnesses without indicating any reason as to its deficiency – It did not discuss the evidence of prosecution witnesses independently to test its credibility – Hence, matter remitted to High Court for fresh consideration.*

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According to the prosecution case, there was a verbal quarrel between M's family members and A-1. On the fateful day, A-1 alongwith his family members and friend, armed with weapons went to the house of M. They injured M with aruval, spear and stick. M's wife-PW-1 and daughter-PW-3 also sustained injuries. M became unconscious and was taken to the hospital. M stated to the doctor that he sustained injuries at the hands of 8 to 10 known persons. PW.11-Sub Inspector of Police recorded the statement of M in writing and obtained his signature. He also examined P.W.-1 to 3. FIR was registered u/s. 147, 148, 341, 324 and 323 IPC. Thereafter, M died. The offence was altered to one u/s. 302 IPC. Trial court convicted and sentenced the accused persons, relying on the evidence of eye-witnesses PW-1 and 2 and the dying declaration. How-

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ever, High Court holding that the evidence of eye-witnesses had to be discarded because the dying declaration could not be believed, acquitted the accused. Hence, the present appeal.

Allowing the appeal and remitting the matter to the High Court, the Court

HELD: The only reason indicated by the High Court to discard the evidence of the eye witnesses is that the dying declaration had been discarded. Even if that be so, without indicating any reason as to what deficiency was there in the evidence of eye witnesses, the High Court should not have discarded their evidence. Nowhere it has been recorded by the High Court that the eye witnesses's evidence was in any way deficient. That being so, the judgment of the High Court is not sustainable. Since the High Court has not discussed the evidence of PWs. 1 and 2 independently to test whether it has credibility or not, it would be appropriate to remit the matter to the High Court to consider the matter afresh and examine whether for any reason the evidence of PWs 1 and 2 need to be discarded. [Para 5] [637 C-E]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
No. 656 of 2002

From the Judgment and final Order dated 12.4.2001 of the High Court of Judicature at Madras in Crl. Appeal No. 617 of 1994

S. Thananjayan and V.G. Pragasam (N.P.) for the Appellant.

Subramonium Prasad (N.P.) for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. These two appeals have been filed by the State of Tamil Nadu questioning correctness of the judgment rendered by a Division Bench of the Madras High

A Court directing acquittal of seven accused persons who had filed four appeals questioning the conviction as recorded by the learned IInd Additional sessions Judge, Tiruchirapalli Division at Tiruchy in Sessions Case No.68/92. These two appeals relate to A-2 and A-7. Seven persons faced trial for alleged commission of several offences punishable under Indian Penal Code, 1860 (in short 'IPC'). Following charges were framed by learned Sessions Judge against the accused persons:

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|---|------------------------|-----------------------|
| C | (i) 148 IPC            | A-1, A-3 and A-6      |
|   | (ii) 147 IPC           | A-2, A-4, A-5 and A-7 |
|   | (iii) 302 IPC          | A-1 and A-3           |
|   | (iv) 302 r/w 149 IPC   | A-2, A-4 and A-7      |
|   | (v) 324 IPC            | A-6                   |
| D | (vi) 324 r/w 149 IPC   | A-1, A-5 and A-7      |
|   | (vii) 323 IPC          | A-7                   |
|   | (viii) 323 r/w 149 IPC | A-1 to A-6            |

E 2. The prosecution version as unfolded during trial is as follows:

F PW-1 is the widow of Mathappan (hereinafter referred to as the 'deceased'). She resides at Mudakkupatti which is situated within the limits of Tiruchirapalli Corporation. The deceased was carrying on business as a fish vendor. PWs 2 and 3 are the daughters of PW-1 and the deceased. PW-2 resides three houses away from the house of P.W.1 along with her husband. All the accused reside at Mudakkupatti. A2 is the brother of A1. A5 is the wife of A1. A3, A4 and A6 are brothers. A7 is the friend of A1 to A6. The occurrence took place on 23.6.1991. One week prior to the date of occurrence, around 1.30 p.m., P.W.3 went to collect water from a public water tank. At that time A1 came in a cycle and teased her. P.W.3 informed about this to the deceased and the deceased in turn questioned A1. At 6.00 p.m. on 22.6.1991, A1 was coming in a cycle with a load of arrack. When G he was passing the house of P.W.2, he had a fall, during which H

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time, the front wheel of the cycle hit against the daughter of P.W.2. On seeing this, P.W.2 scolded A1, which was followed by a wordy quarrel between PW.2 and A1. On coming to know about this, the deceased and P.W.1 went to that place. P.W.2 narrated to them as to what happened. On hearing this, the deceased reprimanded A1 for his improper conduct.

At 7.30 p.m. on 23.6.1991, the deceased, P.Ws 2 and 3 were all watching the television in their house. At that time A1 and A5 came there and standing opposite to the house of P.W.1, challenged the deceased to come out. Accordingly, the deceased came out of the house, followed by P.Ws 1, 2 and 3. A2 to A4, A6 and A7 were also there at that time. A1 was armed with suluki, while A3 and A6 were each armed with an aruval. A4 looking at the deceased, asked him as to why he is often inviting trouble and saying so, he caught hold of his right hand. A2 caught hold of his left hand. A5 induced others to stab him without wasting any further time. Immediately A1 stabbed on the stomach of the deceased with suluki, followed by A3, with an aruval cut on the head of the deceased. P.W.1, on seeing that her husband is being cut by the accused, intervened. At that time, A6 attacked her with an aruval, which was warded off by P.W.1 with her hand, resulting in an injury on her left elbow. He also attacked P.W.1 on her head. P.W.3 also stepped in, by raising her voice and A7 with a stick attacked on the lip and hand of P.W.3. The deceased was lying unconscious. On seeing that, all the accused ran away. The entire occurrence was witnessed by P.Ws 1 to 3. Mahamuni, the other son of the deceased and P.W.1, on hearing about the occurrence, came to the scene of occurrence and rushed his mother and father to the government headquarters hospital at Tiruchirapalli. Madhappan was asked as to who assaulted him and he told the Doctor that he had come to sustain the injuries at the hands of 8 to 10 known persons with the use of aruval, spear and stick at about 7.30 p.m, in his house on 23.6.1991. P.W.7, on examining him found two injuries, which are noticed in Ex.P6. She also examined P.W.1, who told her that she came to sustain the

A injuries at the hands of 10 known persons in her house at 7.30 p.m. on the same day. On her, the doctor found various symptoms as found noticed in Ex.P6.

B PW-11 was the Sub-Inspector of Police in the Cantonment Police station at Tiruchirapalli. At 8.40 p.m. on 23.6.1991, he on receipt of the information over telephone from the hospital, went there and examined the deceased, who was there as an in-patient. At that time, Madhappan gave a statement. He reduced the same into writing and after reading it over to him, his signature was obtained in it. The said statement is Ex.P.9. He came back to the police station at 9.30 p.m. and registered Ex.P9 in Crime No.63 of 91 for offences punishable under Sections 147,148, 341, 324 and 323 IPC. Ex-P10 is the printed First Information Report. He went to the hospital again at 10.30 p.m. and recovered M.Os. 1 and 2 from Madhappan in the presence of PW.5 under a mahazar. He examined P.W.1 in the hospital. He went to the scene of occurrence and examined P.W.3 and another. He also examined P.W.2. On that night, he stayed at the scene of occurrence in the village itself. At 6.00 a.m. on the next day, he prepared Ex.P11/rough sketch. Madhappan breathed his last immediately after the mid night of 25.6.1991. Ex.P7 is the death intimation. On receipt of Ex.P7, P.W.11 altered the section of offence into one under Section 302 IPC and sent the altered printed first information report to the Court as well as to the higher officials.

F The trial Court placed reliance on the evidence of the eye witnesses PWs. 1 and 2 and the dying declaration Ext.P-9. The conviction and the sentence imposed were challenged by all the seven accused persons before the High Court which as noted above directed their acquittal. The High Court held that G the dying declaration Ext.P-9 was not believable. So far as the evidence of the eye witnesses is concerned it was noted that though the eye witnesses spoke about the incident, their evidence has to be discarded because the dying declaration had been discarded.

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3. In support of the appeals, learned counsel for the appellant submitted that the reasoning given by the High Court to discard the eye witnesses's version has no rationale. Merely because the dying declaration has been discarded, that cannot per se render the evidence of the eye witnesses suspect. No other reason has been indicated by the High Court to discard their evidence.

4. There is no appearance on behalf of the respondents in spite of service of notice.

5. We find that the only reason indicated by the High Court to discard the evidence of the eye witnesses is that the dying declaration had been discarded. Even if that be so, without indicating any reason as to what deficiency was there in the evidence of eye witnesses, the High Court should not have discarded their evidence. Nowhere it has been recorded by the High Court that the eye witnesses's evidence was in any way deficient. That being so, the judgment of the High Court is not sustainable. Since the High Court has not discussed the evidence of PWs. 1 and 2 independently to test whether it has credibility or not, it would be appropriate to remit the matter to the High Court to consider the matter afresh and examine whether for any reason the evidence of PWs 1 and 2 need to be discarded.

6. The appeals are allowed to the aforesaid extent.

N.J.

Appeals allowed. F