

NAGAPPAN

v.

STATE BY INSPECTOR OF POLICE, TAMIL NADU
(Criminal Appeal No. 1533 of 2009)

JULY 17, 2013

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Penal Code, 1860 - s.302 r/w s.34 - Murder - On account of previous enmity - Four accused - Eye-witness account of PWs 1 and 3 - As per prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod whereas A-3 was holding a stick - Doctor (PW-10), who conducted the post mortem, asserted that the deceased died due to head injuries - Trial court convicted A-1 to A-4 u/s. 302 r/w s.34 IPC - High Court confirmed the conviction - On appeal by A-3, held: PWs 1 & 3 asserted that A-1 and A-2 caused cut injuries to the deceased using knives - But PWs 1 & 3 did not specifically state whether the stick used by the appellant (A-3) struck on the head or neck of the deceased - They merely stated that appellant used the stick and hit on the back - Absolutely, no reference of any injury on the back of the deceased was made in the post mortem report as well as in the evidence of the Doctor (PW-10) - Also, stick allegedly used by the appellant was not shown to PW-10 - Conviction u/s.302 r/w s.34 IPC insofar as appellant is concerned, thus, liable to be set aside.

Evidence - Related/interested witness - Appreciation - Held: There is no bar in considering the evidence of relatives - Where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses.

The prosecution case was that A-1, A-2, A-3 and A-4 committed the murder of a person on account of enmity

A between him and A-1. It was alleged that A-1 to A-4
assembled near a road with an ulterior motive of killing
the deceased; and on seeing the deceased, attacked him
using knives, stick and iron pipe. A-1 and A-2 inflicted
injuries on the deceased using knives from behind on the
B head and neck respectively while A-3 attacked the
deceased with a stick whereas A-4 attacked him using
iron pipe over the rear portion of his neck.

C The trial court convicted A-1 to A-4 under Section 302
read with Section 34 of IPC and sentenced them to
undergo imprisonment for life. The High Court confirming
the conviction and sentence imposed by the trial Court.
Against the said order, A-3 (the appellant) filed the instant
appeal.

D The appellant submitted that the conviction solely
based on the evidence of PW-1 and PW-3, who are
brothers and interested/related eye-witnesses, cannot be
sustained in the absence of corroboration from other
witnesses; that both the courts below failed to notice the
E fact that the medical evidence did not support the version
of the prosecution in respect of the appellant (A-3) and
in fact was contrary to the evidence of PW-1 and PW-3
and, therefore, the conviction and sentence of the
appellant was liable to be set aside.

F Allowing the appeal, the Court

HELD: 1.1. There is no bar in considering the
evidence of relatives. The prosecution heavily relied on
the evidence of PW-1, PW-3 and PW-10. The trial Court
and the High Court, in view of their relationship, closely
G analysed their statements and ultimately found that their
evidence is clear, cogent and without considerable
contradiction. Where the evidence of "interested
witnesses" is consistent and duly corroborated by
H medical evidence, it is not possible to discard the same

NAGAPPAN v. STATE BY INSPECTOR OF POLICE, 101
TAMIL NADU

merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect credibility of a witness. [Para 7] [106-F-H; 107-A-B]

1.2. On facts, as rightly observed by the Courts below, the evidence of PW-1 and PW-3 is clear, cogent and without much contradiction. In categorical terms, PWs 1 & 3 asserted before the Court that A-1 and A-2 caused cut injuries to the deceased using knives (M.Os 9 & 10) and the appellant (A-3), attacked the deceased with a stick and caused extensive injuries upon the head, neck and other places resulting into his death on the way to hospital. No doubt, they mentioned that the appellant (A-3) attacked the deceased with a stick, however, the evidence of PW-1 and PW-3 clearly implicated A-1 and A-2 and the courts below have rightly accepted the case of the prosecution. Insofar as the role of the appellant (A-3) is concerned, even according to the eye witnesses, viz., PWs 1 & 3, he attacked the deceased with a stick. There is no specific assertion about the exact blow on the head by use of stick by the appellant (A-3). They merely stated that A-3 used the stick and hit on the back. There is not even a whisper that the stick used by the appellant (A-3) hit on the neck or head of the deceased. The evidence of PW-1 and PW-3 are not sufficient to convict the appellant (A-3) under Section 302. [Para 8] [107-F-H; 108-A-C]

Dalip Singh & Ors. vs. State of Punjab AIR 1953 SC 364: 1954 SCR 145; *Guli Chand & Ors. vs. State of Rajasthan* (1974) 3 SCC 698; *Vadivelu Thevar vs. The State of Madras* AIR 1957 SC 614: 1957 SCR 981; *Masalti & Ors. vs. The State of U.P.* AIR 1965 SC 202: 1964 SCR 133; *The State of Punjab vs. Jagir Singh & Ors.* (1974) 3 SCC 277: 1974 (1) SCR 328; AIR 1973 SC 2407; *Lehna vs. State of Haryana* (2002) 3 SCC 76: 2002 (1) SCR 377; *Sucha Singh & Anr. vs. State of Punjab* (2003) 7 SCC 643: 2003 (2) Suppl. SCR 35 = 2003(6) JT SC 348; *Israr vs. State of U.P.* (2005) 9 SCC

- A 616: 2004 (6) Suppl. SCR 695; *S. Sudershan Reddy & Ors. vs. State of A.P.* (2006) 10 SCC 163: 2006 (3) Suppl. SCR 743; AIR 2006 SC 2716; *Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra* JT 2007 (9) SC 194; *Waman and Others vs. State of Maharashtra* (2011) 7 SCC 295: 2011
- B (6) SCR 1072; *State of Haryana vs. Shakuntla and Others* (2012) 5 SCC 171: 2012 (5) SCR 276; *Raju @ Balachandran & Ors. vs. State of Tamil Nadu* 2012 (11) SCALE 357 and *Subal Ghorai & Ors. vs. State of West Bengal* (2013) 4 SCC 607 - relied on.

C 2. Doctor (PW-10), who conducted the post mortem on the dead body, asserted that the deceased died due to head injuries. He explained that the deceased had 4 injuries on the head and one swelling injury over the right eye. Exh. P-10 is the post mortem certificate issued by

D him. Admittedly, the stick alleged to have been used by the appellant (A-3) was not shown to the Doctor (PW-10). Even PWs 1 & 3 have not specifically stated, namely,

E whether the stick used by the appellant (A-3) struck on the head or neck. In the post mortem report as well as in the evidence of the Doctor (PW-10), absolutely, there is

F no reference of any injury on the back of the deceased person. Considering the fact that even as per the prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod and A-3 was holding only

G stick, in the absence of specific assertion by PWs 1 & 3 about the specific role of the appellant (A-3) and no medical evidence from the Doctor in the post mortem certificate, the conviction and the ultimate sentence in respect of the appellant (A-3) cannot be sustained. Both

H the courts below failed to take note of the fact that the medical evidence has not supported the version of the prosecution in respect of the appellant (A-3) and in fact contrary to the evidence of PWs 1 & 3, therefore, the conviction and sentence of the appellant is liable to be set aside. The conclusion of the High Court that the

NAGAPPAN v. STATE BY INSPECTOR OF POLICE, 103
TAMIL NADU

appellant along with others attacked the deceased with intention to cause injuries is without any basis and not supported by acceptable evidence. Therefore, the conviction under Section 302 read with Section 34 IPC insofar as the appellant is concerned is liable to be set aside. [Paras 9, 10] [108-C, G-H; 109-A-B, D-H; 110-A-B]

Case Law Reference:

1954 SCR 145	relied on	Para 7	A
(1974) 3 SCC 698	relied on	Para 7	C
1957 SCR 981	relied on	Para 7	
1964 SCR 133	relied on	Para 7	
1974 (1) SCR 328	relied on	Para 7	
2002 (1) SCR 377	relied on	Para 7	D
2003 (2) Suppl. SCR 35	relied on	Para 7	
2004 (6) Suppl. SCR 695	relied on	Para 7	
2006 (3) Suppl. SCR 743	relied on	Para 7	E
JT 2007 (9) SC 194	relied on	Para 7	
2011 (6) SCR 1072	relied on	Para 7	
2012 (5) SCR 276	relied on	Para 7	F
2012 (11) SCALE 357	relied on	Para 7	
(2013) 4 SCC 607	relied on	Para 7	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1533 of 2009.

From the Judgment and Order dated 12.04.2006 of the High Court of Judicature at Madras in Crl. Appeal No. 1861 of 2002.

H

A K.K. Mani, Abhishek Krishna for the Appellant.

M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

B **P. SATHASIVAM, J.** 1. This appeal has been filed against the judgment and order dated 12.04.2006 passed by the High Court of Judicature at Madras in Criminal Appeal No. 1861 of 2002 whereby the High Court dismissed the appeal filed by the appellants therein and confirmed the order of conviction and sentence dated 20.12.2002 passed by the Court of Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore in Sessions Case No. 230 of 2000.

2. Brief facts

D (a) The case relates to the death of a person by name Pasupathy, resident of Periya Irusampalayam village, committed by Sivaraman (A-1), Mano (A-2), Nagappan (A-3) and Tamil@Tamilvanan (A-4) on account of enmity between the deceased-Pasupathy and Sivaraman (A-1). At one point of time, there was a quarrel between Sivaraman (A-1) and one Srinivasan (DW-1) which was pacified by Pasupathy and thereby A-1 had an impression that Pasupathy is in support of Srinivasan (DW-1). Due to this kind of impression, A-1 planned to eliminate Pasupathy.

F (b) In order to materialize the same, on 08.05.2000, at 08:30 p.m., A-1 to A-4, assembled near the road leading to the graveyard of Periya Irusampalayam village with an ulterior motive of killing Pasupathy. At the relevant time, Sivaraj (PW-1) and Ganapathy (PW-3), who are brothers and relatives of Pasupathy, along with Vijayan, Murugan, Babu and Veerappan were having conversation near the electric post on the way to graveyard and Pasupathy was coming towards the same direction. On seeing Pasupathy, the accused persons, in order to grab the opportunity of killing him, attacked him using knives, stick and iron pipe. A-1 and A-2 inflicted injuries on the

NAGAPPAN v. STATE BY INSPECTOR OF POLICE, 105
TAMIL NADU [P. SATHASIVAM, J.]

deceased using knives from behind on the head and neck respectively. A-3 attacked Pasupathy with a stick whereas A-4 attacked him using iron pipe over the rear portion of his neck. When PW-1 and others came to rescue Pasupathy, the accused persons ran away from the spot leaving behind the weapons used in the incident. Pasupathy was immediately taken to the hospital but he died on the way.

(c) On the very next day, i.e., on 09.05.2000, at 05:00 a.m., PW-1 lodged a complaint at Reddichavadi Police Station which came to be registered as Crime No. 132 of 2000 under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC').

(d) After investigation, the case was committed to the Court of Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore under Section 302 read with Section 34 of IPC which was numbered as Sessions Case No. 230 of 2000. The Additional District and Sessions Judge, by order dated 20.12.2002, convicted A-1 to A-4 for the offence punishable under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life along with a fine of Rs. 4,000/- each, in default, to further undergo rigorous imprisonment (RI) for 1 (one) year.

(e) Aggrieved by the said order, A-1 to A-3 preferred Criminal Appeal No. 1861 of 2002 before the High Court. The Division Bench of the High Court, by order dated 12.04.2006, dismissed their appeal by confirming the conviction and sentence imposed by the trial Court.

(f) Against the said order, Nagappan (the appellant herein and A-3 therein) has filed this appeal by way of special leave before this Court.

3. Heard Mr. K.K. Mani, learned counsel for the appellant-accused and Mr. M. Yogesh Khanna, learned counsel for the respondent-State.

Contentions:

A 4. Mr. K.K. Mani, learned counsel for the appellant, at the
 foremost, submitted that the conviction solely based on the
 evidence of Sivaraj (PW-1) and Ganapathy (PW-3), who are
 brothers and interested/related eye-witnesses, cannot be
 sustained in the absence of corroboration from other
 B witnesses. He further submitted that both the courts below failed
 to notice the fact that the medical evidence did not support the
 version of the prosecution in respect of the appellant (A-3) and
 in fact contrary to the evidence of PW-1 and PW-3 and,
 therefore, the conviction and sentence of the appellant is liable
 C to be set aside.

5. On the other hand, Mr. M. Yogesh Khanna, learned
 counsel for the State submitted that merely because the eye-
 witnesses in the case on hand, namely, PW-1 and PW-3, are
 brothers/related to the deceased, their evidence cannot be
 D eschewed. According to him, the role of the Court is to
 scrutinize the evidence carefully. He also pointed out that in
 addition to the evidence of said eye-witnesses, medical
 evidence through Doctor (PW-10) also supports the prosecution
 case, and hence, there is no valid ground for interference.

E 6. We have carefully considered the rival submissions and
 perused all the relevant materials.

Discussion:

F 7. As regards the first contention about the admissibility
 of the evidence of PW-1 and PW-3 being closely related to
 each other and the deceased, first of all, there is no bar in
 considering the evidence of relatives. It is true that in the case
 on hand, other witnesses turned hostile and not supported the
 G case of the prosecution. The prosecution heavily relied on the
 evidence of PW-1, PW-3 and PW-10. The trial Court and the
 High Court, in view of their relationship, closely analysed their
 statements and ultimately found that their evidence is clear,
 cogent and without considerable contradiction as claimed by
 H their counsel. This Court, in series of decisions, has held that

NAGAPPAN v. STATE BY INSPECTOR OF POLICE, 107
TAMIL NADU [P. SATHASIVAM, J.]

where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect credibility of a witness. [vide *Dalip Singh & Ors. vs. State of Punjab*, AIR 1953 SC 364, *Guli Chand & Ors. vs. State of Rajasthan*, (1974) 3 SCC 698, *Vadivelu Thevar vs. The State of Madras*, AIR 1957 SC 614, *Masalti & Ors. vs. The State of U.P.*, AIR 1965 SC 202, *The State of Punjab vs. Jagir Singh & Ors.* (1974) 3 SCC 277 = AIR 1973 SC 2407, *Lehna vs. State of Haryana*, (2002) 3 SCC 76, *Sucha Singh & Anr. vs. State of Punjab*, (2003) 7 SCC 643 = 2003(6) JT SC 348, *Israr vs. State of U.P.*, (2005) 9 SCC 616, *S. Sudershan Reddy & Ors. vs. State of A.P.*, (2006) 10 SCC 163 = AIR 2006 SC 2716 and *Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra* JT 2007 (9) SC 194, *Waman and Others vs. State of Maharashtra*, (2011) 7 SCC 295, *State of Haryana vs. Shakuntla and Others*, (2012) 5 SCC 171, *Raju @ Balachandran & Ors. vs. State of Tamil Nadu*, 2012 (11) Scale 357, *Subal Ghorai & Ors. vs. State of West Bengal*, (2013) 4 SCC 607].

8. In the light of the above principles, let us consider the acceptability or otherwise of the evidence of Sivaraman (PW-1) and Ganapathy (PW-3). In view of the stand taken by the appellant, we have analysed the evidence of PWs 1 & 3. As rightly observed by the courts below, their evidence is clear, cogent and without much contradiction. In categorical terms, PWs 1 & 3 asserted before the Court that Sivaraman (A-1) and Mano (A-2) caused cut injuries to Pasupathy (deceased) using knives (M.Os 9 & 10) and Nagappan - the appellant herein (A-3), attacked the deceased with a stick and caused extensive injuries upon the head, neck and other places resulting into his death on the way to hospital. No doubt, they mentioned that the appellant (A-3) attacked Pasupathy with a stick, however, our analysis shows that the evidence of PW-1 and PW-3 clearly implicated A-1 and A-2 and the courts below have rightly

A accepted the case of the prosecution. Insofar as the role of the appellant (A-3) is concerned, even according to the eye witnesses, viz., PWs 1 & 3, he attacked the deceased with a stick. There is no specific assertion about the exact blow on the head by use of stick by the appellant (A-3). They merely stated that A-3 used the stick and hit on the back. There is not even a whisper that the stick used by the appellant (A-3) hit on the neck or head of the deceased. We are satisfied that the evidence of PW-1 and PW-3 are not sufficient to convict the appellant (A-3) under Section 302.

C 9. Now let us consider the medical evidence. Doctor (PW-10), who conducted the *post mortem* on the dead body, in his evidence, has stated that he conducted the post mortem at 12.30 p.m. on 09.05.2000 and found the following injuries on the dead body:

- D "1. Bluish discolouration and swelling present over right upper eye lid.
2. Lacerated injury of 4 cm x 1 cm bone deep present over left Parietal region of head with fracture of underlying bone.
- E 3. Lacerated injury of 5 cm x 1 cm bone deep over left occipital region of head.
- F 4. Lacerated injury of 4cm x 1 cm bone deep present over left occipital region of head.
5. Obliquely placed incised wound 10 x 1.5 bone deep with fracture of underlying bone present over back of neck behind left ear."

G PW-10 further stated that the deceased appeared to have died of the wounds on the head 6 to 24 hours before the *post mortem*. In other words, he asserted that the deceased died due to head injuries. He explained that the deceased had 4 injuries on the head and one swelling injury over the right eye.

H He further explained that out of 4 injuries on the head, two were

NAGAPPAN v. STATE BY INSPECTOR OF POLICE, 109
TAMIL NADU [P. SATHASIVAM, J.]

on the rear left side, one injury was found on the rear of the head and one injury was found near the left ear. According to him, injury Nos. 2 to 5 were at bone depth. He also stated that the 5th injury was cut injury. Injury Nos. 2 to 4 were lacerated injuries. Exh. P-10 is the post mortem certificate issued by him. Admittedly, the stick alleged to have been used by the appellant (A-3) was not shown to the Doctor (PW-10). In his cross examination, he admitted that he did not remember that the police had enquired by showing the weapons to him. He also stated that Injury Nos. 1-4 may be possible by attack with iron pipe. He also admitted that there was no injury on the back of the deceased person. He concluded that there was no other injury other than what he had stated in the examination-in-chief as well as noted in the *post mortem* certificate (Ex.P-10).

10. In the earlier paragraph of our discussion, we mentioned the minimal role alleged to have been played by the appellant (A-3). Even PWs 1 & 3 have not specifically stated, namely, whether the stick used by the appellant (A-3) struck on the head or neck. In the *post mortem* report as well as in the evidence of the Doctor (PW-10), absolutely, there is no reference of any injury on the back of the deceased person. Considering the fact that even as per the prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod and A-3 was holding only stick, in the absence of specific assertion by PWs 1 & 3 about the specific role of the appellant (A-3) and no medical evidence from the Doctor in the *post mortem* certificate, we are of the view that the conviction and the ultimate sentence in respect of the appellant (A-3) cannot be sustained. We are satisfied that both the courts below failed to take note of the fact that the medical evidence has not supported the version of the prosecution in respect of the appellant (A-3) and in fact contrary to the evidence of PWs 1 & 3, therefore, the conviction and sentence of the appellant is liable to be set aside. The conclusion of the High Court that the appellant along with others attacked the deceased with intention to cause injuries is without any basis and not

A supported by acceptable evidence. Therefore, the conviction under Section 302 read with Section 34 IPC insofar as the appellant is concerned is liable to be set aside.

B 11. In the light of the above discussion, the conviction and sentence of the appellant under Section 302 read with Section 34 IPC is set aside. The appeal is allowed. The appellant is directed to be released forthwith, if not required in any other case.

B.B.B.

Appeal allowed.