
(2005) 06 MAD CK 0008

In the Madras High Court

Case No : Criminal A. No's. 1067 of 2002 and 298 of 2004

Alumalai and 5 others

APPELLANT

Vs

State
State Vs Ramasamy and 6 Others

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Citation : (2005) 06 MAD CK 0008

Hon'ble Judges : S. Sardar Zackria Hussain, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : N. Manokaran in Criminal A. No. 1067 of 2002 and Mr. E. Raja, Addl. P.P. in Criminal A. No. 298 of 2004, for the Appellant; N. Manokaran in Crl. A. No. 298 of 2004 and Mr. E. Raja, Addl. P.P. in Crl. A. No. 1067 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.

1. Both the appeals are being disposed of by this common judgment.
2. The appellants in Crl.A. No. 1067 of 2002, namely A-3 to A-6, A-10 and A-16 were convicted by the trial Court for the offences under Sections 147, 302 read with 149, 307 read with 149 (4 counts) and each of them was sentenced to undergo one year rigorous imprisonment with a fine of Rs. 1,000/-, life imprisonment with a fine of Rs. 1,000/- and seven years rigorous imprisonment with a fine of Rs. 500/- for the respective offences. A-3 was also convicted for the offence u/s 25(1-B)(a) of the Arms Act and sentenced to undergo one year rigorous imprisonment with a fine of Rs. 500/-. The sentences imposed on the accused persons were directed to run concurrently. Challenging the said conviction and sentence, Crl.A. No. 1067 of 2002 has been filed.

3. In the very same trial, the other accused, namely A-7 to A-9, A-11 to A-13 and A-15 were acquitted. Challenging the said acquittal, the State has filed appeal in CrI.A. No. 298 of 2004.

4. The short facts leading to the conviction are as follows:

(a) On 17.2.1996, P.W.1 Tamilselvan, Superintendent of Police working in Special Task Force formed for the purpose of securing the

sandalwood Veerappan, along With his men, was proceeding towards the Hasanur camp. The jeep was driven by P.W.9 Ilango. On the way

there was a traffic Jam at 24th Hairpin bend due to the accident of a lorry. Therefore, P.W.1 was not able to proceed further with the vehicle. So,

information was passed on to the Hasanur camp people through wireless message.

(b) P.W.2 Mohan Nawaz, Sub-Inspector of Police and P.W.3 Loyola Ignatius, another Sub-Inspector of Police took another jeep and came to

the place where P.W.1 and others were waiting. P.Ws.1 to 4. P.W.9 and one Selvaraj got into the jeep and they were proceeding to Hasanur.

Near Araepalayam Pirivu, P.W.1 instructed P.W.9 Driver to proceed to Kethesal camp.

(c) At about 5.30 p.m., when the jeep was proceeding on the hill track, suddenly there was a gun shot sound and the gun bullets hit against the

jeep. On the instruction of P.W.1, P.W.9 took the jeep reverse which hit against the rock behind and stopped. Except the deceased Selvaraj, the

Constable sitting in the jeep and all the other inmates got down from the jeep.

(d) P.W.2 Mohan Nawaz jumped out of the jeep and got into the nearby pit. By using A.K. 47 guns, he retaliated the attack. P.Ws.1, 3 and 4,

with the help of their guns, also retaliated the attack by opening fire towards the accused persons. During the attack by the accused, Selvaraj, who

was inside the jeep, received bullet injuries and died. The other witnesses, hiding themselves made a counter attack on the accused persons and

they saw the accused persons running away with S.L.R. guns in their hands. Then, the complainant and others came out.

(e) P.W.1 sustained injuries on the left palm and right flank. P.W.3 sustained injuries on his head. At that time, P.W.2 was not found. Then,

P.Ws.1, 3, 4 and 9 were waiting for the arrival of some vehicle. In the meantime, Karnataka S.T.F. jeep came there and P.Ws.1, 3 and 9 got into

the said jeep and came to Hasanur camp.

(f) On the instructions given by P.W.1, P.W.9 gave Ex.P-3 complaint to P.W.7 Head Constable. Then, P.Ws.1, 3 and 9 came to the Government

Hospital, Samraj Nagar and they were treated by P.W.19 Doctor at about 8.10 p.m. Thereafter, they were taken to Pasavappa Hospital, Mysore

and the treatment was given by P.W.20 Doctor.

(g) P.W.7 handed over Ex.P-3 complaint to P.W.22 Inspector of Police and the case was registered in Crime No.3 of 1996. In the meantime, on

receipt of message, one Jayamurthy, S.T.F. Inspector, Karnataka, came to the scene of occurrence and rescued P.W.2 and sent him to Samraj

Nagar Government Hospital for treatment.

(h) Then, the dead body was removed from the scene of occurrence and taken to the Government Hospital at Sathiyamangalam. P.W.22

investigating officer came to the hospital and conducted inquest.

(i) On 18.2.1996 at about 6.00 a.m., P.W.22 Inspector of Police went to the scene and observed all formalities and recovered the broken glasses,

empty cartridges and blood stained jeep mat and other things. P.W.22 came to the Pasavappa Hospital and recorded statements from P.Ws.1, 2

9 and others.

(j) In the meantime, P.W.12 Doctor attached to Sathiyamangalam Government Hospital conducted post-mortem and issued Ex.P-6 post-mortem

certificate. He gave an opinion in Ex.P-6 postmortem certificate that the deceased would appear to have died of shock and haemorrhage due to

bullet injuries to spinal cord and great vessels of the neck about 12 to 18 hours prior to autopsy.

(k) Meanwhile, P.W.13 Karnataka S.T.F. recovered M.Os.21 to 30 from the scene and handed over the same to P.W.22. Then, separate teams

were constituted to arrest the accused persons.

(1) Then, the jeep was produced before P.W.15 Motor Vehicle Inspector, who in turn, examined the same and issued Ex.P-11 report.

(m) P.W.22 Inspector of Police thereafter came to the hospital and obtained wound certificates relating to P.Ws.1, 2, 3 and 9.

(n) Then, the material objects were sent for chemical analysis.

(o) On 14.3.1996. P.W.11 Inspector of Police, S.T.F. arrested A-5 to A-8 and A-11

to A-13. On 15.3.1996, P.W.14 Sub-Inspector of Police

arrested A-9. On 3.4.1996, P.Ws.11 and 14 arrested A-12. On 18.4.1996, P.W.14 Sub-Inspector of Police arrested A-3 and recovered

M.O.16 country-made gun.

(p) Then, P.W.22's successor P.W.23 took up further investigation and filed the final report.

(q) During the course of trial, P.Ws.1 to 23 were examined, Exs.P-1 to P-47 were filed and M.Os.1 to 58 were marked.

(r) When the accused were examined u/s 313 Cr.P.C. with reference to incriminating materials against them, they denied their complicity in the crime. They stated that they have been falsely implicated in the case.

(s) On the side of defence, D.W.1 was examined and Exs.D-1 to D-8 were filed.

(t) The trial Court, out of 16 accused persons, convicted six persons and acquitted seven persons.

(u) During the course of trial, three accused persons, namely A-1, A-2 and A-14 died. Challenging the said conviction, A-3 to A-6. A-10 and A-

16 have filed Crl.A. No. 1067 of 2002 and challenging the acquittal, the State has filed Crl.A. No. 298 of 2004.

5. Mr. Manokaran, learned counsel for the appellants in Crl.A. No. 1067 of 2002 and for the respondents in Crl.A. No. 298 of 2004, took us

through the entire evidence and contended that the investigation has not been conducted properly and the identity of the accused has not been

established and therefore, the accused are liable to be acquitted.

6. With reference to the above submissions, learned Additional Public Prosecutor would make vehement submissions in justification of the

reasonings given by the trial Court in convicting the appellants. He would further state that the reasonings given by the trial Court for acquitting the

other accused, viz., A-7 to A-9, A-11 to A-13 and A-15 are not sound and therefore, their acquittal is liable to be set aside and they are also

liable to be convicted.

7. We have given our anxious consideration to the rival contentions urged by learned counsel for the parties.

8. According to the prosecution, on 17.2.1996, when P.W.1 Superintendent of Police, P.Ws.2 and 3, the Sub-Inspectors of Police, P.W.4

security man of P.W.1 and one Constable Selvaraj were proceeding to Hasanur camp in a jeep driven by P.W.9 Driver in search of Veerappan,

the accused persons, concealing themselves in a nearby area, began to shoot at the jeep and caused injuries on the inmates of the jeep. Totally, 30

accused persons were chargesheeted originally. Of them, only 16 persons were tried and during the course of trial, three persons died.

9. According to the prosecution, all the 16 persons were present in the place of occurrence. The investigating agency, through P.W.22 Inspector

of Police, collected various materials to show that the accused persons participated in the occurrence, fired shots with the guns and caused injuries

on P.Ws.1, 2, 3 and 9. The wound certificates obtained from the Doctors would indicate that one person died and other persons sustained gun

shot injuries.

10. Learned counsel for the appellants in Crl.A. Nos. 1067 of 2002 and for the respondents in Crl.A. No. 298 of 2004 would submit that the jeep

which had been used by the witnesses, has not been recovered and A.K. 47 guns, which had been used by the witnesses, also have not been

recovered and even though the pellets had been recovered from the body of the deceased, the same have not been sent for Ballistic Expert's

opinion for the purpose of finding out whether the guns used by the accused have been used to fire these pellets. He also pointed out various

irregularities committed by the investigating agency during the course of investigation. According to the learned counsel, during the course of

investigation, D.W.1 filed a petition before the Court accusing the Police that innocent persons living in the villages were taken by the Special Task

Force on suspicion that they were involved in the occurrence which took place on 17.2.1996 and in the absence of any evidence against them,

they cannot be convicted for the offence of murder.

11. It is also pointed out that the appellants were identified for the first time in the Court and the absence of identification parade would make it

clear that the evidence relating to the identification for the first time in the Court is valueless.

12. Learned Additional Public Prosecutor would submit, on the strength of the decisions of the Supreme Court reported in 2003 (4) Supreme 394

(Malkhansingh & ors. vs. State of Madhya Pradesh) and 2004 S.C.C. (Cri) 944

(Munna vs. State (NCT of Delhi)), that it is not the rule that the identification for the first time in the Court would be fatal to the prosecution case and in this case, the Special Task Force (S.T.F.) did not doubt the identity of the group which was formed by Veerappan and as such, the identification in the Court cannot be discarded.

13. Though several grounds have been urged by learned counsel for the accused persons, we are of the view that the identity of the accused

persons has not been clearly established. As a matter of fact, A-7 to A-9, A-11 to A-13 and A-15 were acquitted by the trial Court only on the

reason that their names were not mentioned in the deposition of the witnesses. The trial Court was under the impression that since the names of A-

3 to A-6 and A-10 have been mentioned in the deposition of witnesses and they are identified in the Court, the conviction can be based on the

basis of the said identification. But, on going through the records, it is clear that even in the Court, there was no such identification by the witnesses.

14. As a matter of fact, P.W.9 Driver of the jeep was the author of the F.I.R. In the F.I.R., he stated that Veerappan, Baby Veerappan and three

others were found in the scene and they were running away from the place of occurrence. Even though some names have been given in the F.I.R.,

P. W.9 has not chosen to implicate any accused, while deposing. Even though it is submitted that there was identification with regard to the other

accused by the other witnesses, we are not able to find any material to show that they were identified in the Court. P.Ws.2, 3 and 4 though would

mention the names of some of the accused as if they participated in the occurrence, it is clear that they have not identified those persons in the

Court.

15. It is true that P.W.1 identified in the Court two accused, viz., A-4 and A-16. According to him, he saw Veerappan and three others running

from the scene and A-4 and A-16 were the persons among them. But unfortunately, that evidence cannot be taken into consideration, especially

when he admitted that he had never given the names of A-4 and A-16 during the course of investigation and he also admitted that he has never

seen those persons earlier. According to him, after the occurrence, for the first time, he happened to see A-4 and A-16 in the Court.

16. Even though there is identification of A-4 and A-16 for the first time in the

Court by P.W.1, the Supreme Court in the decision reported in

Dana Yadav @ Dahu and Others Vs. State of Bihar, would give the guidelines with reference to the appreciation of value of the evidence of

identification in the Court. The Supreme Court would hold that though failure to hold test identification parade does not make the evidence of

identification in Court inadmissible, ordinarily, identification of an accused by a witness for the first time in Court should not form the basis of

conviction.

17. According to the Supreme Court, unless it is corroborated by previous identification by a witness in the test identification parade or by any

other evidence, the identification for the first time in the Court inherently is a weak character. The previous identification in the test identification

parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law.

Ordinarily, if an accused is not named in the F.I.R., his identification by witnesses in Court, should not be relied upon, especially when they did not

disclose the name of the accused before the Police.

18. In this case, the evidence of P.Ws.1 and 22 would clearly indicate that A-4 and A-16 were identified by P.W.1 only in Court, and the same

would not help the prosecution, especially when there is an admission by P.W.1 that he had never seen A-4 and A-16 earlier. Further, he simply

stated in the chief examination in the last portion of the evidence that after the shooting incident was over, he found some of the persons running

from the scene and A-4 and A-16 were also among them. Thus, it is clear that he had fleeting glimpse. He has never given any identifiable marks of

the accused in his statement before the investigating officer. On the other hand, strangely, for the first time, in the deposition before the Court, he

was able to give the names of A-4 and A-16.

19. In fact, P.W.22 the investigating officer would clearly state that P.W.1 did not give the names of any accused persons in his statement

recorded by him. That being the situation, it is not understandable as to how P.W.1 came to know the names of A-4 and A-16, while deposing in

the Court. The other witnesses, viz., P.Ws.2, 3 and 4, the other eye-witnesses, as indicated above, though would give the names of some of the

accused, admittedly, they were not identified by them even in the Court.

20. Though we would appreciate the effort and courageous steps taken by P.W.1, the Superintendent of Police, to go to the Camp in order to

trace out Veerappan and his men, we are unable to convict the accused on the sole basis of his deposition inasmuch as the investigating agency has

not collected substantial materials to establish the identity of all the accused.

21. In our view, the reasonings given by the trial Court for acquitting the other accused, cannot be said to be invalid. On the other hand, the same

reasonings would apply to the appellants also. Under those circumstances, we are of the view that the prosecution has failed to prove its case

against the appellants/accused beyond reasonable doubt in respect of Section 302 IPC.

22. However, it is clear that the country-made gun was recovered from A-3 and there is a clear evidence that that no licence was obtained by him

for possession of the same. So, in our view, the conviction against A-3 for the offence u/s 25(1-B)(a) of the Arms Act is perfectly justified.

Consequently, his conviction for this offence alone has to be confirmed.

23. Thus, the appeal in CrI.A. No. 1067 of 2002 is partly allowed. The conviction and sentence imposed on A-4 to A-6, A-10 and A-16 by the

trial Court are set aside and they are acquitted of the charges. They are directed to be released forthwith, unless they are required in connection

with any other case.

24. The conviction and sentence imposed on A-3 for the offence u/s 25(1-B)(a) of the Arms Act are confirmed. He is acquitted of the other

charges. Since A-3 has already undergone the period of sentence, he is directed to be released forthwith, unless he is required in connection with

any other case.

25. The fine amounts, if paid by A-3 to A-6, A-10 and A-16 shall be refunded, except for the offence u/s 25(1-B)(a) of Arms Act by A-3.

26. The appeal by the State in CrI.A. No. 298 of 2004 is dismissed.