
(2006) 02 MAD CK 0220
In the Madras High Court
Case No : C.A. No. 1091 of 2002

Appadurai and Rajagopal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2006) 02 MAD CK 0220

Hon'ble Judges : M. Karpagavinayagam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : R. Karthikeyan, for the Appellant; E. Raja, APP, for the Respondent

Final Decision : Allowed

Judgement

M. Karpapavinayagam, J.—Appadurai (Accused No. 1) and Rajagopal (Accused No. 2) have been convicted for an offence punishable u/s 302 read with Section 34 I.P.C. Challenging the same, this appeal has been filed.

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

(a) The deceased - Palanisamy had an illicit relationship with P.W.5 (wife of A1). A panchayat was convened and the panchayatdars warned Palanisamy - deceased not to continue the said relationship with P.W.5. A1 and A2, who are the pangalis of Palanisamy, questioned Palanisamy about his illicit relationship with P.W.5. The occurrence in this case took place on 02.08.1996. One day prior to the date of occurrence, both the accused went to the house of the deceased. The deceased was not available in his house and only his mother (P.W.1) was available. A1 and A2 told the mother of Palanisamy - deceased that one day or the other, they would kill Palanisamy, since he is having illicit relationship with P.W.5 (A1's wife). At about 4.00 p.m on that day, Palanisamy - deceased came to his house. P.W.1 warned him not to go out. During night time, P.W.1, P.W.2, P.W.3 and the relatives of P.W.1 were sleeping inside the house. The deceased

was also sleeping along with them. At about 2.30 a.m on the occurrence day, the deceased came out of the house. At that time, A1 and A2 came there. A1 poured kerosene on the body of Palanisamy from a tin and A2 threw a lighted match stick on him. Palanisamy - deceased caught fire. On seeing this, P.W.1 raised a hue and cry. A1 and A2 ran away from the scene of occurrence, leaving the kerosene tin at the scene of occurrence itself.

(b) P.W.7 (sister of the deceased) came to the scene of occurrence and put out the fire. Immediately thereafter, the deceased was taken to the Government Hospital at Jayamkondam. He was examined by D.W.1 (Doctor) at 5.00 a.m on 03.08.1996. The accident register issued by D.W.1 is marked as Ex.C.1. Palanisamy - deceased told the Doctor that he poured kerosene to himself and attempted to commit suicide. Thereafter, he was referred to the Medical College Hospital at Thanjavur, where he took treatment for two days.

(c) P.W.9 is the Doctor, who treated Palanisamy - deceased in the Government Medical College Hospital at Thanjavur. The deceased told P.W.9 that A1 and A2 poured kerosene on his body and set fire to him. An intimation about the same was sent to the police as well as to the Judicial Magistrate. On receipt of the said information, P.W.11 went to the Government Medical College Hospital at Thanjavur and recorded the dying declaration given by Palanisamy - deceased at about 10.45 a.m on 03.08.1996. That statement is marked as Ex.P.19. In that statement, Palanisamy has implicated A1 alone.

(d) On receipt of the information sent by the Government Hospital at Jayamkondam, P.W.8, the Sub-Inspector of Police, went to the said hospital, where he came to know that Palanisamy has been referred to the Government Medical College Hospital at Thanjavur. Immediately, he went to the said hospital and recorded a statement from Palanisamy. That statement is marked as Ex.P.3. P.W.8 treated the said statement given by Palanisamy as a complaint and on that basis, he registered a case in Crime No. 223/1996 against the accused for an offence u/s 307 I.P.C. Thereafter, P.W.8 went to the scene of occurrence and examined the witnesses. He prepared Ex.P.1, the observation mahazar and Ex.P.5, the rough sketch and seized the kerosene tin. He also took sample earth. The next day morning i.e., on 04.08.1996, Palanisamy died in the hospital. On receipt of the said information, he altered the section of offence into one u/s 302 read with Section 34 I.P.C.

3. On the side of the prosecution, P.Ws.1 to 13 were examined and Exs.P.1 to P.21 and M.Os.1 to 5 were marked.

4. When the accused were questioned u/s 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against them, they denied their complicity in the crime. However, on their behalf, D.Ws.1 to 4 were examined.

5. The Trial Court accepted the case of the prosecution and convicted the accused for the offence u/s 302 read with Section 34 I.P.C. Hence this appeal.

6. Learned counsel appearing for the appellants took us through the entire evidence and pointed out that there are various infirmities in the materials collected by the prosecution. According to him, the evidence of P.W.1 (mother of the deceased) is not reliable and the four dying declarations recorded by various authorities would indicate that there is no consistency in the statements given by Palanisamy - deceased and therefore, on that sole ground, the accused is liable to be acquitted.

7. We have heard the learned Additional Public Prosecutor appearing for the State on these aspects. We have also given our anxious consideration to the rival contentions.

8. P.W.1 (mother of the deceased) is the sole eye witness to the occurrence. According to her, on 02.08.1996, both A1 and A2 came to her house in search of her son Palanisamy. Palanisamy was not available in the house. A1 and A2 threatened her that since Palanisamy - deceased is having an illicit relationship with P.W.5 (A1's wife), one day or the other, they would kill him. At about 2.30 a.m on 02/03.08.1996, the deceased went out. At that time, A1 and A2 came there. A1 poured kerosene from a tin on the body of Palanisamy - deceased and A2 threw a lighted match stick on his body. She would further state that, he was immediately taken to the Government Hospital at Jayamkondam and on he being referred to the Government Medical College Hospital at Thanjavur, he was taken to that hospital for treatment. He took treatment in that hospital for two days and he died in the hospital on 04.08.1996.

9. P.Ws.2 and 3 were also sleeping in the same house along with P.W.1. Though P.Ws.2 and 3 in their evidence have stated that the accused and the deceased were not in good terms, they have not implicated the accused. Therefore, from a reading of the evidence of P.W.1, it is clear that her evidence cannot be believed since, there is no corroboration to the evidence of P.W.1 that the accused alone committed the offence. In view of the fact that there is no corroborative evidence to the evidence of P.W.1 from the evidence of other witnesses regarding the occurrence proper, we are unable to give any credibility to the evidence of P.W.1.

10. The next aspect is regarding the reliability of the four dying declarations given by Palanisamy - deceased. The first dying declaration from the deceased was recorded by D.W.1, the Doctor attached to the Government Hospital at Jayamkondam at 5.00 a.m on 03.08.1996. D.W.1 in his evidence would state that the deceased told him that he himself poured kerosene on his body and set fire to himself and thus sustained the injuries. This is the earliest document. Even according to the prosecution, the deceased was first taken to the Government Hospital at Jayamkondam and from there he was taken to the Government Medical College Hospital at Thanjavur. P.W.8 (Investigating Officer) and P.W.13 (Investigating Officer) would admit that Palanisamy - deceased was initially treated by D.W.1 and that they examined D.W.1. No explanation whatsoever has been given by the prosecution as to why D.W.1 has not been examined on their side but on the other hand, he has been examined on the side

of the defence. Through D.W.1, Ex.C.2 (first dying declaration) has been marked.

11. The next statement given by Palanisamy - deceased is marked as Ex.P.10 recorded by P.W.9, the Doctor at Thanjavur, at 8.50 a.m on 03.08.1996. In that statement, he has implicated both the accused. The third statement given by Palanisamy is marked as Ex.P.19 and it was recorded by the Special Magistrate/ P.W.11 at 10.45 a.m on 03.08.1996. In that statement, Palanisamy - deceased has implicated A1 alone. The fourth statement was given by Palanisamy to P.W.8, the Sub-Inspector of Police and the said statement has been treated as a complaint. In this statement, Palanisamy has implicated both the accused. The statements given by Palanisamy are inconsistent with each other. Therefore we are unable to place any reliance on these documents. Consequently, we are inclined to give the benefit of doubt to the accused. Accordingly, the appeal is allowed and the conviction and sentence imposed on the accused by the learned Sessions Judge would stand set aside. Both the accused are set at liberty forthwith, if they are not required in connection with any other case. The fine amount, if any, paid by them shall be refunded to them.