

(2008) 07 MAD CK 0108

In the Madras High Court

Case No : Criminal Appeal No's. 1081 and 1102 of 2007

Chinnathambi and Satheesh @ Satheeshkumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 147, 148, 149, 302

Citation : (2008) 07 MAD CK 0108

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : M. Ravi, in Crl.A. 1081/2007 and R. John Sathyan, in Crl.A. 1102/2007, for the Appellant; N.R. Elango, APP, for the Respondent

Judgement

M. Chockalingam, J.—This judgement shall govern these two appeals viz., Crl.A. No. 1081 of 2007 filed by the first accused and Crl.A. No. 1102 of 2007 filed by the third accused. These two appeals along with other accused ranked as A2 and A4 stood charged, tried and found guilty by the First Additional Sessions Division, Salem in S.C. No. 324 of 2006 as follows:

Accused	Charges	Findings	Sentence
A-1	148 IPC	Guilty	1 year R.I
A-2 to A-4	147 IPC	Guilty	6 months R.I. each
A-1	302 IPC	Guilty	Life imprisonment along with fine of Rs. 20,000/- i/d 1 year R.I.
A-2 and A-3	302 r/w 114 IPC	Guilty	Life imprisonment along with fine of Rs. 20,000/- i/d 1 year R.I. each
A-4	302 r/w 149 IPC	Guilty	Life imprisonment along with fine of Rs. 20,000/- i/d 1 year R.I.

A-4 307 IPC Guilty 7 years R.I along with fine of Rs. 5000/- i/d 6 months R.I. ---

A-1 to A-3 307 r/w 149 IPC Guilty 7 years R.I along with fine of Rs. 5000/- i/d 6 months R.I.each

The sentences are ordered to run concurrently.

2. The short fact necessary for the disposal of these appeals could be stated as follows:

P.W.1 was the resident of Gorimedu Nellikadu Mariamman koil Street. On 31.10.2004, P.Ws. 2 and 5 went to Rohini theatre, at Chinnathirupathi to witness a film. During interval, Appu hit on P.W.5 and the same was questioned by P.Ws.2 and 5. At that time, the said Appu and others had beaten them. Immediately, P.Ws. 2 and 5 went home and informed it to P.W.1 at about 9.15 p.m. On hearing this, P.W.1 along with P.Ws. 2 and 5, P.Ws. 3 and 4 and the deceased went to the theatre and they were waiting outside the northern gate of the Rohini theatre. After the film was over, A1 to A4 and the juvenile accused in whose respect the case was split up came out of the theatre. The deceased Karthikeyan questioned A1 why they have beaten P.Ws. 2 and 5. Immediately, A1 asked the other accused to catch hold of the deceased. A2 and A3 caught hold of the deceased and A1 took a knife and stabbed him twice on the stomach. When P.W.4 intervened, he was caught hold by A4 and the juvenile accused and the other accused by name Negro @ Jayakumar stabbed him. When there was distress cry and crowd gathered, all the accused fled away from the place of occurrence.

(b) The deceased was first taken to Salem Medical Centre at 10.30 p.m. where P.W.10 doctor, after giving initial treatment told the witnesses to take the severely injured Karthikeyan to the Government Hospital since his condition was very critical. Thereafter, he was taken to Shanmuga Hospital where he was treated by P.W.11 doctor, at 11.30 p.m. where the doctor advised the witnesses to take him to the Government Hospital. Accordingly, the other witnesses took him to the Government Hospital, Salem, where he was declared dead at about 12.30 a.m. P.W.4 was taken to Salem Ruthramoorthy Hospital where P.W.12-doctor gave initial treatment and the doctor asked the witnesses to take him to the Government Hospital. The accident register copy in respect of P.W.4 was marked as Ex.P.14. Thereafter, P.W.1 proceeded to Hasthampatti Police Station where he gave Ex.P1 report to P.W.16 Sub- Inspector of Police. On the strength of Ex.P1 report, a case came to be registered in Crime No. 1962/2004. The F.I.R. copy Ex.P.21 was despatched to Court.

(c) On receipt of the copy of F.I.R., P.W.17 Inspector of Police took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar Ex.P.2 and also drew a rough sketch Ex.P.25. The place of occurrence and also the dead body were photographed through P.W.14 photographer and the photos and the negatives were also marked Exs.P15 & P16

series respectively. Following the inquest made on the dead body, the investigating officer prepared Ex.P.26 inquest report in the presence of witnesses.

(d) The dead body was subjected to post mortem. P.W.17-doctor, attached to Government Hospital, Salem conducted autopsy on the dead body of the deceased Karthikeyan and gave his opinion in Ex.P.24 post mortem certificate that the deceased died out of shock and haemorrhage due to stab injury to right lung and liver.

(e) Pending investigation, A1 and the juvenile accused were arrested and they gave confessional statement and the same was recorded. The admissible part of the confessional statement of A1 was marked as Ex.P.5 pursuant to which he produced a knife and a blood stained shirt which were recovered under a cover of mahazar. The other accused A2, A3 and A4 were also arrested and they were also sent for judicial remand. All the material objects recovered from the place of occurrence, from the dead body and also the material objects recovered from the accused which were produced pursuant to the confession statement were subjected to medical analyses which brought forth two reports viz., chemical report Ex.P.19 and the serologist report Ex.P.20. On completion of the investigation, the investigating officer filed a final order.

(f) The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined 18 witnesses and relied in 26 exhibits and 14 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.P.C. They denied them as false. No defence witness was examined. The Court heard the arguments advanced on either side and took a view that the prosecution has proved its case beyond reasonable doubt and found the accused guilty and rendered the judgement of conviction and sentence as referred to above. Hence, these appeals at the instance of A1 and A3.

3. Advancing the argument on behalf of the appellants, learned Counsel would submit that in the instant case, P.Ws. 1 to 6 were shown as occurrence witnesses. As per the prosecution, P.Ws. 2 and 5 went to Rohini theatre to witness a film and during the interval at 8.30 p.m., they were attacked by the accused and they came home and reported to P.W.1 and P.W.1 along with 5 others and the deceased went to the theatre to question the conduct of the accused and thus, the incident had taken place. If really such incident had taken place at 8.30 p.m. in which P.Ws.2 and 5 were actually attacked, they would have gone to the Police Station and gave a complaint but no such complaint was given. The prosecution has come with a story as if P.Ws. 2 and 5 gone to the house of P.W.1 and reported to him.

4. Learned Counsel would further add, in the instant case when according to the prosecution, Karthikeyan was stabbed to death at 10.30 p.m. in front of the northern gate of Rohini theatre at the time when the film was over, there should

have been number of independent witnesses available. But in the instant case, not even one independent witness was examined. Further, if really the occurrence had taken place at 10.30 p.m. and prosecution would claim that the severely injured karthikeyan was taken to the Medical Centre at about 10.30 p.m. where the witnesses were advised to take the deceased karthikeyan to the Government Hospital, they did not do so, instead they went to the Shanmugam Hospital at 11.30 p.m. and there also they were advised to go to the Government Hospital and they took him to Government Hospital Salem where he was declared dead at 12.30 a.m. Therefore, there was an interval of 2 1/2 hours. The condition of Karthikeyan was so serious when the witnesses were advised by the doctor of Medical Centre to take him to the Government Hospital but they had not done so. This would clearly indicate that actually Karthikeyan was not injured or stabbed in the incident as claimed by the prosecution at 10.30 hours but there should have been another incident which should have taken place subsequently but the witnesses suppressed the same to the advantage of the prosecution case.

5. The learned Counsel would further add that in the instant case, all the accused persons were actually inside the theatre and it was not the case of the prosecution that they attacked P.W. 2 or P.W.5 with any weapon but they have only beaten them with hands. It is also further claimed by the prosecution that P.Ws. 2 and 5 came to the house of P.W.1 and informed him what had happened in the theatre and P.W.1 with 5 others went to the theatre. Thus, the prosecution witnesses were the aggressors at the time when the occurrence had taken place. The prosecution has further come forward to state that two of the accused were having knife in their hands which is unbelievable and unacceptable. Even the medical evidence canvassed did not support the ocular testimony. The arrest, confession statements and pursuant to the confession, recovery was made were all nothing but cooked up story to strengthen the prosecution case as far as possible but the prosecution has miserably failed to prove its case.

6. As the second line of argument, learned Counsel would submit that insofar as P.W.4 was concerned, there was an attempt made to murder him but the accused who stabbed him actually died, pending trial. The charges levelled against that accused stood abated. What was shown against A4 and the juvenile accused was that they were actually holding the deceased. This fact was introduced in order to rope A4 and the juvenile accused in the case. Equally, A2 and A3 also caught hold of the deceased in order to facilitate the crime in which A1 stabbed the deceased twice on the stomach. Insofar as A2 and A3 are concerned, they caught hold of the deceased at that time but this fact was nothing but introduced in order to rope A2 and A3 in the crime. They have not acted with any common object in their mind and in furtherance of common object they have not acted so since they were actually coming out of the theatre and they have been suddenly intervened and intercepted by the prosecution witnesses. Under such circumstances, the prosecution case that, the accused had common object and in furtherance of common object they have acted so, could not be imagined and the

prosecution in that regard could not bring home the guilty of the accused through these witnesses.

7. Added further learned Counsel, insofar as A1 was concerned, it could be seen that there was free fight and in that process even assuming that A1 stabbed the deceased, it was actually due to sudden quarrel and provocation which certainly cannot be termed as murder. Under such circumstances, if A1's case as brought forth by the prosecution is accepted by the Court, he has got to be dealt with, not for murder but for the other provisions of I.P.C. and this has got to be considered by this Court.

8. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

9. It is not in controversy that one Karthikeyan, following the incident that had taken place at the place as put forth by the prosecution, he was taken to Medical Centre and thereafter to Shanmugham Hospital and thereafter, he was taken to the Government Hospital, Salem where he was declared dead at 12.30 a.m. on the date of occurrence. Following the investigation made by P.W.17 Inspector of Police, the dead body was subjected to post mortem and the post mortem doctor P.W.17 has deposed before the Court as a witness and has also given opinion through the contents of the post mortem certificate Ex.P.24 that the deceased Karthikeyan died out of homicidal violence. The fact that Karthikeyan died out of homicidal violence was never questioned by the appellants before the trial Court. Hence, no impediment is felt by this Court in recording so.

10. In order to substantiate the act of the accused, the prosecution has marched P.Ws 1 to 6 as eye witnesses. As could be seen from the available materials, originally, there was an incident that had taken place at 8.30 p.m. inside Rohini theatre at Chinnathirupathi, Salem in which P.Ws. 2 and 5 were beaten by the accused party. Thereafter, P.Ws. 2 and 5 approached P.W.1 and informed him about the incident and after hearing the same, P.W.1 accompanied by P.Ws. 2 and 5 along with the deceased and others went to the theatre and they were waiting till the accused come out of the theatre and they question them about their conduct. When we visualise such a situation, it would be quite clear that P.Ws. 1 to 5 and the deceased went to the theatre to question the same and when the accused came out of the theatre, they would have quarrelled with them and in that process, the occurrence had taken place. The witnesses have spoken in one voice that it was A1 who stabbed the deceased on the stomach twice. At this juncture, the contention put forth by the learned Counsel for the appellants that such an occurrence at 10.30 p.m. in front of the theatre in which Karthikeyan was attacked could not have taken place at all, cannot be accepted. It is true that the severely injured Karthikeyan was originally taken to Medical Centre, Salem and thereafter, he was treated by P.W.10 doctor who has categorically deposed before the Court. Insofar as the treatment given in Shanmuga Hospital is concerned, P.W.11 doctor has been examined and he has also spoken to the fact. Thereafter, the said Karthikeyan was declared dead in

the Government Hospital, Salem. All put together would clearly indicate that the severely injured Karthekeyan was taken to the Medical Centre, thereafter, he was taken to Shanmuga Hospital and then to the Government Hospital, Salem. Therefore, the contention put forth by the learned Counsel for the appellants that Karthikeyan could not have been stabbed in the incident as put forth by the prosecution, cannot be countenanced.

11. Added further learned Counsel, it is true that there was a delay in registering the F.I.R. The occurrence had taken place at 10.30 p.m. and P.W.1 has given Ex.P1 report to P.W.16 Sub Inspector of Police at Hasthampatti Police Station at 12.30 a.m. and thereafter, a case came to be registered. It is true that the place of occurrence is not far away from the Police Station. It is pertinent to point out that when the witnesses were to save the life of their friend and in their attempt to save life, they took him to different hospitals and one cannot expect them to go to the police station immediately and give a complaint. Hence, in that process, the delay has naturally occurred. Therefore, the said delay, in the considered opinion of the Court, will in no way take away the truth of the prosecution case.

12. As could be seen from the available materials, it was A1 who stabbed the deceased, as a result, he died. Insofar as P.W.4 is concerned, he was severely injured and the Accident Register copy in that regard was marked as Ex.P.14. But insofar as P.W.4 was concerned, he was unable to identify either the person who attacked him or the person who caught hold of him. Hence, his evidence in toto is not acceptable.

13. It is true that identification parade has taken place and this identification parade did not bring home any useful result as expected by the prosecution. Thus, as rightly pointed out by the learned Counsel for the appellants, at the time of occurrence A2 and A3 caught hold of the deceased in order to facilitate the crime, cannot be taken as true, on consideration of the facts and circumstances of the case. Therefore, what is all that remains proved, in the considered opinion of the Court was that, A1 stabbed the deceased twice on the stomach and caused his death. Even when this factual position remains proved, the Court must look into the second line of argument. It is true, the occurrence had taken place at 10.30 p.m. in front of the theatre. As per the prosecution, P.Ws. 1 to 5 along with the deceased went to the theatre and questioned the accused party who came out of the theatre. The prosecution witnesses were actually waiting outside the theatre and they questioned the accused. Therefore, naturally, there should have been quarrel and free fight among both the parties. Under such circumstances, it cannot be said that A1 acted with any intention or premeditation but only due to sudden quarrel at the theatre, the occurrence had taken place. Under these circumstances, it would be quite clear that the act of the accused/A1 was neither intentional nor premeditated nor planned, but it was done due to sudden quarrel, which arose between both the parties. Hence, the Court is of the opinion that the act of A1 would not attract the penal provision of

murder, but it would be one culpable homicide not amounting to murder and therefore, the act of A1 would attract the penal provision of Section 304(I) IPC and awarding punishment of 7 years rigorous imprisonment would meet the ends of justice. Insofar as A3 is concerned, he is not found guilty of the charges and he is entitled for acquittal.

14. Accordingly, the conviction and sentence imposed on the appellant/A1 in Crl.A. No. 1081/2007, u/s 302 IPC are modified and instead the appellant/A1 is convicted u/s 304(I) IPC and sentenced to undergo 7 years rigorous imprisonment and he is acquitted of the other charges levelled against him. The period of sentence already undergone by the appellant/A1 is ordered to be given set off. The fine amount and default sentence imposed by the trial court will hold good. In so far as Crl.A. No. 1102 of 2007 is concerned, the criminal appeal is allowed, setting aside the conviction and sentence imposed on the appellant/A3 by the court below. The appellant/A3 is acquitted of the charges levelled against him. He is directed to be released forthwith unless his presence is required in connection with any other case. The bail bonds if any executed by the appellant/A3 shall stand terminated and the fine amount if any paid by him is ordered to be refunded to him.

15. In the result, insofar as Crl.A. No. 1081/2007 is concerned, the conviction and sentence imposed on the appellant/A1 are modified as stated above. Insofar as Crl.A. No. 1102/2007 is concerned, the criminal appeal is allowed, setting aside the conviction and sentence imposed on the appellant/A3 by the Court below.