
(2010) 03 MAD CK 0095
In the Madras High Court
Case No : Criminal A. No. 89 of 2010

Kanniappan and Others

APPELLANT

Vs

State Inspector of Police

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2010) 03 MAD CK 0095

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

Bench : Division Bench

Advocate : A. Padmanabhan, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.—Challenge is made to the judgment dated 8.1.2010 passed by the Additional Sessions Court-cum-Fast Track Court,

Dharmapuri in S.C. No.145 of 3007, whereby the accused/appellants, seven in numbers, stood charged, tried and awarded punishment as

follows:

Sl. No. Rank of the Charges Sentence

accused

1 1st accused 147, 148, 324 One year R.I. and to pay a fine of

read with 149, Rs. 500/- in default to undergo R.I.

307 read with for one month for the offence under

149 and 302 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine

of Rs. 500/- in default to undergo R.I.
for two months for the offence under
Section 324 read with 149 I.P.C.

R.I. for five years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for six months for the offence under
Section 307 I.P.C.

Life imprisonment and to pay a fine of
Rs.2,000/- in default to undergo R.I.
For two years for the offence under
Section 302 read with 149 I.P.C.

2 2nd accused 147, 148, 324 One year R.I. and to pay a fine of
read with 149, Rs. 500/- in default to undergo R.I.
307 read with for one month for the offence under
149 and 302 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for two months for the offence under
Section 324 read with 149 I.P.C.

R.I. for five years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for six months for the offence under
Section 307 read with 149 I.P.C.

Life imprisonment and to pay a fine of
Rs. 2,000/- in default to undergo R.I.
For two years for the offence under
Section 302 I.P.C.

3 3rd accused 147, 148, 324 One year R.I. and to pay a fine of
read with 149, Rs. 500/- in default to undergo R.I.

307 read with for one month for the offence under
149 and 302 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for two months for the offence under
Section 324 read with 149 I.P.C.

R.I. for five years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for six months for the offence under
Section 307 read with 149 I.P.C.

Life imprisonment and to pay a fine of
Rs. 2,000/- in default to undergo R.I.

For two years for the offence under
Section 302 I.P.C.

4 4th accused 147, 148, 324 One year R.I. and to pay a fine of
read with 149, Rs. 500/- in default to undergo R.I.

307 and 302 for one month for the offence under
read with 149 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for two months for the offence under
Section 324 read with 149 I.P.C.

R.I. for five years and to pay a fine
of Rs. 500/- in default to undergo R.I.
for six months for the offence under
Section 307 I.P.C.

Life imprisonment and to pay a fine of
Rs. 2,000/- in default to undergo R.I.

For two years for the offence under

Section 302 read with 149 I.P.C.

5 5th accused 147, 148, 324, One year R.I. and to pay a fine of

307 read with Rs. 500/- in default to undergo R.I.

149 and 302 for one month for the offence under

read with 149 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine

of Rs. 500/- in default to undergo R.I.

for two months for the offence under

Section 324 I.P.C.

R.I. for five years and to pay a fine

of Rs. 500/- in default to undergo R.I.

for six months for the offence under

Section 307 read with 149 I.P.C.

Life imprisonment and to pay a fine of

Rs. 2,000/- in default to undergo R.I.

For two years for the offence under

Section 302 read with 149 I.P.C.

6 6th accused 147, 148, 324, One year R.I. and to pay a fine of

307 read with Rs. 500/- in default to undergo R.I.

149 and 302 for one month for the offence under

I.P.C. Section 148 I.P.C.

R.I. for two years and to pay a fine

of Rs. 500/- in default to undergo R.I.

for two months for the offence under

Section 324 I.P.C.

Life imprisonment and to pay a fine of

Rs. 2,000/- in default to undergo R.I.

For two years for the offence under

Section 302 I.P.C.

7 7th accused 147, 148, 324, One year R.I. and to pay a fine of

307 read with Rs. 500/- in default to undergo R.I.

149 and 302 for one month for the offence under

read with 149 Section 148 I.P.C.

I.P.C.

R.I. for two years and to pay a fine

of Rs. 500/- in default to undergo R.I.

for two months for the offence under

Section 324 I.P.C.

R.I. for five years and to pay a fine

of Rs. 500/- in default to undergo R.I.

for six months for the offence under

Section 307 read with 149 I.P.C.

Life imprisonment and to pay a fine of

Rs. 2,000/- in default to undergo R.I.

For two years for the offence under

Section 302 read with 149

I.P.C.

2. The short facts necessary for the disposal of the appeal can be stated as follows:-

(i) P.W.1 is the son of the deceased. P.W.2 is the wife of the deceased. P.W.3 is the son-in-law of the deceased. P.W.4 is the daughter of the

deceased. A1 is the brother of the deceased. A2 is the co-brother of fourth accused. A3 is the son of the brother of the deceased. A4 is the next

brother of the deceased. A5 is the daughter of first accused. A6 is the younger brother of second accused. A7 is the wife of second accused. They

are all residents of Mallikuttai village, Kattukottamai within the jurisdiction of respondent-police.

(ii) There was a division of the family property. The grandfather of P.W.1 originally had vast landed properties. After dividing the properties and

giving to his sons, he retained 5 acres for himself. He was not maintained or

cared by the first accused, but the family of the deceased took care of him and maintained him. Few years prior to his death, the grandfather of P.W.1 executed two settlement deeds bequeathing the property to P.W.1 and his younger brother one Arumugam. The family of first accused was aggrieved over the same.

(iii) On the date of occurrence i.e. 14.7.2005, the fourth accused was actually cutting thorn fences and making attempt to take them. In that

process, there was a wordy altercation. The fourth accused called accused 1 to 3 and 5 to 7. All the accused immediately rushed over there. In

that process, the deceased was attacked by the second accused by crow bar and by accused 3 and 6 by stick. P.W.1 was attacked by first

accused with suluki and fourth accused with crow bar. When P.W.2 intervened, seventh accused has bitten her finger, fifth accused has also

attacked her with stick and sixth accused with a crowbar and caused injury. When the distressing cry is heard, immediately they ran away from the

place of occurrence. The deceased, P.Ws.1 and 2 were taken to the Hospital.

(iv) On receipt of intimation, P.W.10 Head Constable attached to respondent-police proceeded to the Hospital and recorded the statement of

P.W.1. P.W.13 Sub Inspector of Police, on the strength of the statement of P.W.1 registered a case in Crime No.309 of 200 for the offences

under Sections 147, 148, 341, 324, 307 of the Indian Penal Code and prepared Ex.P17 First Information Report. Thereafter, P.W.13, who took

up the investigation, went to the spot, made an inspection and prepared observation mahazar Ex.P2 and rough sketch Ex.P18.

(v) Pending investigation, the accused persons were arrested. Accused 1 and 3 were arrested. The first accused gave confession statement

voluntarily and the admissible portion of the same is marked as Ex.P20. He also produced suluki and the same is recovered under the cover of

mahazar Ex.P21. P.W.16 Inspector of Police took up further investigation. He recorded the statement of witnesses. On 29.7.2005 at about 12.10

a.m., the deceased, who was actually taking treatment, died. Hence, the case was altered to one u/s 302 of the Indian Penal Code and amended

First Information Report Ex.P27 was despatched to the Court.

(vi) The investigating Officer conducted inquest on the dead body in the presence of witnesses. Ex.P28 is the inquest report. Thereafter, he sent the

dead body for conducting autopsy. P.W.14, Doctor, who conducted autopsy, issued postmortem Certificate Ex.P23, where he has opined that the

deceased died of effects of head injuries. In the said Certificate, the injuries are noted as follows:-

INJURIES:

1. A sutured lacerated injury on L frontal region of scalp 7x1x0.5 cm; 2) A sutured lacerated injury on R frontotemporal region of scalp 8x1x0.5

CM; 3) A contusion on mid parieto - occipital region of scalp 8x6x0.5CM; Dark red; 4) A fissured fracture of coronal suture line present 10 cm in

length depressed fracture of R temporal bone present, 8x4 CM. Along with fissured fracture of R temporal bone present 6 CM in length 5)

Subdural & Subarachnoid hemorrhages present over both cerebral hemispheres, brain edematous on cut section (Antemortem)

(vii) The other accused were also arrested and they gave confession statements voluntarily. The weapons produced by them were recovered under

mahazar and all these materials objects were sent for chemical analysis and the chemical analysis report and Serological reports are marked as

Ex.P15 and P16 respectively. On completion of investigation, final report is filed. The case was committed to the Court of Sessions. Necessary

charges were framed against the accused.

3. In order to substantiate its case, the prosecution examined 18 witnesses and relied on 29 documents and also relied on M.Os.1 to 14. On

completion of examination of witnesses on the side of the prosecution, when the accused were questioned u/s 313 of the Criminal Procedure

Code, they denied them as false. No witness was examined on the side of the accused, but 3 documents were marked on their side.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinising the materials available on record, found the accused guilty

and awarded punishment referred to above. Hence, this appeal is filed at the instance of the appellants.

5. Advancing arguments on behalf of the appellants, learned Counsel would submit that in the instant case, the prosecution has miserably failed to

prove its case beyond reasonable doubt, but the Trial Court has taken an erroneous view. Learned Counsel, pointing to the relationship of P.Ws.1

to 4, would urge that they were all not only interested, but also inimical. The

prosecution witnesses have admitted that there was a partition in the property and the properties were divided by their grandfather and civil proceedings were pending before the Court and thus, before accepting their evidence, careful scrutiny test should be applied. Therefore, the Court should have rejected their testimony, since there are lot of discrepancies on various aspects. There are number of independent witnesses available, even as per the admission made by P.Ws.1 to 4, but no explanation was tendered.

6. Learned Counsel added further that accused 1, 3, 4 were all injured in the same transaction and they had taken treatment in the same hospital.

P.W.16 Investigating Officer has categorically admitted that he came to know that they were actually hospitalised, but he has not recorded their

statement and no complaint was registered. It becomes necessary on the part of the prosecution to produce the accident register copies Ex.D2 in

respect of fourth accused and Ex.D3 in respect of first accused. A reading of the same would clearly indicate the fact that they sustained injury at

the very same time. If to be so, the prosecution has miserably failed to prove the genesis of the occurrence. In the absence of necessary materials

and non explanation of the injuries sustained by the accused, the accused are entitled for acquittal.

7. Learned Counsel added further that in the instant case, insofar as fifth accused is concerned, her name was not mentioned in the First

Information Report. There is nothing to infer that the accused persons had got common object and in furtherance of which, they have acted so. The

medical opinion canvassed by the Doctor did not corroborate the ocular testimony. Hence, they are entitled for acquittal in the hands of the Court.

The Trial Court has not considered either factual or legal aspects. The Judgment of the Trial Court has got to be set aside.

8. This Court heard the learned Additional Public Prosecutor on the above contentions.

9. This Court paid its anxious considerations on the above contentions. It is not in controversy that one Murugavel, father of P.W.1, who sustained

injury in the occurrence which took place on 14.7.2005 at about 3 p.m. was taken to the hospital and given treatment. Despite treatment, he died

on 29.7.2005. At the outset, it must be stated that the death was consequent

upon the injuries sustained by him at the time of occurrence which is not at all disputed by the appellants before the Trial Court. The Doctor, who gave treatment, was not examined and the case sheet was not produced. Immediately after the occurrence, the deceased was taken to the hospital, admitted in the hospital and he was given continuous treatment, but he died. All would indicate the fact that as a direct consequence of the injuries sustained by him, he died. Hence the finding by the Trial Court that the deceased died due to homicidal violence is perfectly correct.

10. Insofar as the charge levelled against the appellants is concerned, the prosecution has examined P.Ws.1, 2 as eye witnesses. It is true, P.Ws.1 and 2 are closely related to the deceased. P.Ws.3 and 4 are also shown as eye witnesses. Insofar as P.Ws.1 and 2 are concerned, they have given evidence cogently. The contention put forth by the learned Counsel for the appellant is that the witnesses are interested and also inimical and hence their evidence before acceptance should be carefully scrutinised. The prosecution cannot have any quarrel over the settled principles of law. Even after application of the test, the Court is satisfied that their evidence has got to be accepted. It is also well settled principles of law in a given case like this, when the eye witnesses are injured witnesses, their evidence should not be discarded unless and until a strong reason or circumstance is brought about. In the instant case, no reason or circumstance is brought forth before the Court to reject their evidence.

11. P.Ws.1 and 2 were taken to the hospital and they were treated by P.W.15 Doctor and accident registers are marked as Ex.P24 and P25, wherein time and place of occurrence are marked. P.Ws.3 and 4 have spoken in one voice about the occurrence. It is brought to the notice of this Court that accused 1, 3 and 4 sustained injuries in the course of transaction, but the same was never explained by the prosecution and not even a counter case was registered by the investigator of the crime in question. This contention cannot be countenanced

12. From Wound Certificates Ex.D2 and D3 of accused 1 and 3, it would be quite clear that the injuries sustained by them were actually simple.

The prosecution is not duty bound to explain in every case about the injuries sustained by the accused. If the accused got some injuries in the same transaction, there is no impediment for them to go to the police station and give

complaint, but not done so. There is nothing to indicate that the accused went to the police station or approached the police and gave the complaint and the police refused to take the complaint. The injuries are only simple. Thus, the non-explanation of the simple injuries sustained by the accused at the time of occurrence will not in any way affect the prosecution case. But, at the same time, it is quite clear that in the very course of transaction, the deceased died out of the injuries sustained by him and P.Ws.1 and 2 have also sustained injuries, and in the same transaction, accused 1, 3 and 4 also sustained injuries. It cannot be stated that the prosecution has failed to bring the genesis of the occurrence. The same is well spoken to by all the witnesses. A4 cut the thorn and it was questioned by the witnesses and all of them came forward to question and thereafter, there was a fight. The Court is able to see force in the contention of the learned Counsel for the accused that the accused would not have acted with common object in causing injuries to anyone of them. Therefore, the case of the prosecution that the accused persons had acted with common object cannot be accepted.

13. Insofar as the deceased is concerned, he was attacked by second accused by the crow bar and by accused 3 and 6 with sticks. As could be seen from the post-mortem Certificate, the Doctor, who has issued post-mortem Certificate has opined that the injury found on skull was fatal, which has caused the death. Insofar as second accused is concerned, that would clearly indicate that it was murderous, and second accused was to be found guilty u/s 302 of the Indian Penal Code and awarding Life imprisonment would meet the ends of justice. Accused 3 and 6 though caused simple injury were to be found guilty u/s 324 of the Indian Penal Code and two years Rigorous imprisonment has to be awarded. Insofar as P.W.1 is concerned, A1 has attacked him with suluki and A4 attacked him with crow bar. Since the injuries were found to be grievous as per the wound Certificates, the act of A4 would attract Section 326 of the Indian Penal Code and punishment of three years Rigorous Imprisonment has to be awarded. Insofar as A1 is concerned, he is to be found guilty u/s 324 of the Indian Penal Code and two years of Rigorous Imprisonment has to be awarded. Insofar as P.W.2 was concerned, A7, according to the prosecution, has bitten her finger and A6 attacked him with crow bar. The

injuries are simple. Hence, A6 and A7 are to be found guilty u/s 323 of the Indian Penal Code and one year Rigorous Imprisonment to be

awarded to them. Insofar as fifth accused is concerned, as rightly pointed out by the learned Counsel for the appellants, the name of fifth accused is

not even found in the First Information Report and hence he is entitled for outright acquittal.

14. Accordingly, the conviction and sentence imposed on A2 u/s 302 of the Indian Penal Code are confirmed.

15. The conviction and sentence imposed on A3 and A6 u/s 302 of the Indian Penal Code are set aside, and instead, they are convicted u/s 324

of the Indian Penal Code and are directed to suffer two years Rigorous Imprisonment. The fine imposed by the Trial Court will hold good. The

sentence already undergone by them shall be given set off.

16. The conviction and sentence imposed on A1 and A4 u/s 307 of the Indian Penal Code are set aside and instead, A4 is convicted u/s 326 of

the Indian Penal Code and directed to suffer three years Rigorous Imprisonment. A1 is convicted u/s 324 of the Indian Penal Code and is directed

to suffer two years Rigorous Imprisonment. The fine imposed by the Trial Court on A1 and A4 will hold good. The sentence already undergone by

A1 and A4 shall be given set off.

17. The conviction and sentence imposed on A6 and A7 u/s 324 of the Indian Penal Code are set aside and instead, they are convicted u/s 323 of

the Indian Penal Code and directed to suffer one year Rigorous Imprisonment. The fine imposed by the Trial Court will hold good. The sentence

already undergone by them shall be given set off.

18. The sentences imposed on A6 are to run concurrently.

19. A5 is acquitted of all the charges levelled against her. The fine amount, if any, paid by her shall be refunded to her. The bail bond executed by

her shall stand terminated.

20. In respect of the other charges levelled against A1 to A4 and A6 and A7, the judgment of the Trial Court is set aside and they are acquitted of

those charges. The fine amounts, if any, paid by them in that regard shall be refunded to them.

21. In the result, the criminal appeal is partly allowed. It is reported that A7 is on bail. Hence, the Sessions Judge shall take steps to commit A7 to

prison to undergo the remaining period of sentence, if any.