

(2004) 08 MAD CK 0108

In the Madras High Court

Case No : Criminal Appeal No. 1011 of 2000

Karuna @ Manoharan and Others

APPELLANT

Vs

Inspector of Police

RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

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

Citation : (2004) 08 MAD CK 0108

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Nalini Chidambaram for S. Silambanan,s 1 and 2 and C.S. Dhanasekaran,s 3 to 6, for the Appellant; A.P. Suryaprakasam, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—A1, A2, A3, A5, A6 and A8 in Sessions Case No.64 of 1998 on the file of III Additional Sessions Judge, Pondicherry are the appellants in the above appeal. Against the conviction and sentence of Life imprisonment and fine of Rs.1,000/- for the offence u/s 302 read with 149 IPC; 3 years R.I. and fine of Rs.1000/- for the offence u/s 449 read with 149 IPC; one year R.I. for the offence u/s 148 IPC; and also against A-2, the sentence of R.I. for 6 months-all the sentences to run concurrently, they preferred the present appeal before this Court.

2. The case of the prosecution in brief is as follows:-

(a). The deceased Selvam is cousin i.e., paternal uncle's son of P.W.1. Previously, one Dhina @ Thirunavukarasu, a friend of the accused was murdered. The accused were under the impression that the deceased Selvam was involved in the murder of Dhina @ Thirunavukarasu and they wanted to do away with the said Selvam. On 10-7-97 at about 11 P.M. when he was taking food in a restaurant called "Anitha Restaurant" on Maraimalai Adigal Salai near Nellithope

along with his friends Suresh and Manikandan, he saw deceased Selvam along with others, namely, Anthuvan, Felix and Babu coming out of Patrick Wines shop, which is situated adjacent to the hotel where they were taking food. When they were nearing Subbiah statue, all the accused armed themselves with deadly weapons like Aruval, Iron Pipes, etc., intercepted them.

(b) A-1 Karuna @ Manoharan assaulted Selvam with Aruval on his head and again attacked him (Selvam) on his hand. A-2 Baskar assaulted Babu with Aruval on his head. Babu, Anthuvan and Felix ran and escaped through Thiruvalluvar Salai. The deceased Selvam ran towards Nellithope and all the accused chased him and P.W.1 Suresh and Manikandan also ran behind the accused.

(c) The deceased Selvam ran with bleeding injuries and entered into a house in Kannara Street near Nellithope, which was kept open and the inmates of the house came out of the house out of fear. All the accused entered the house, cut Selvam all over his body and caused multiple bleeding injuries to him. P.W.1 also entered into the house and tried to prevent the attack, but he sustained injuries on his left fore arm and thereafter, he escaped from the scene, went to Periyar Nagar and informed this incident to his brother Alukku @ Alexander, Pakkiam, Regina, Sekar, Sakthivel and brought them to the place of occurrence, where they saw Selvam lying dead in a pool of blood. He went to the Police Station and gave a complaint-Ex.P-1.

(d) Based on the strength of the complaint-Ex.P-1, P.W.13, Rajendran-Sub Inspector of Police, Orleanpet Police Station, registered a case in Crime No. 201/97 under sections 147, 148, 302, 307 read with 149 I.P.C. Ex.P-34 is the First Information Report registered by him and he dispatched copies of the First Information Report to the concerned authorities.

(e) On receipt of information from the said Rajendran-Sub Inspector of Police, P.W.15-Ramaraj-the then Inspector of Police, D"Nagar Circle, Pondicherry, reached the Police Station and received the First Information Report from the Sub Inspector of Police. In the meanwhile, the injured Samuvel and Anthuvan were sent to General Hospital, Pondicherry for treatment. P.W.15 visited the scene of occurrence. He prepared rough sketch of the scene of occurrence-Ex.P-39, observation mahazar-Ex.P-9 in the presence of witnesses, Sekar-P.W.8 and one Alphonse. The body of Selvam was sent to General Hospital, Pondicherry at 01.55 hours. At 02.00 hours the Material Objects found in the scene of occurrence, viz., blood stained knife (M.O.4), blood-stained pipe (M.O.5), blood stained wooden plank (M.O.6) and clotted blood (M.O.7) were seized under the cover of mahazar-Ex.P10 in the presence of witnesses. He examined witnesses and recorded their statements. At 8.15 hours at 11-7-97 he summoned the panchayatdars and conducted inquest in their (panchayatdars) presence and the relatives of the deceased. Ex. P-40 is the inquest report. During the inquest, he examined witnesses Samuel(P.W.1), Regina Mary, Bakkiam, and Alexander @ Alukku (P.W.4) and recorded their statements.

(f) On 17-7-97 at 12.30 hours P.W.15 arrested the accused 1 to 7 at Villupuram road near Anna Nagar and brought them to the Police Station at 13.00 hours. On interrogation, they voluntarily admitted the offences and gave confessional statements between 14.00 and 23.45 hours and the same were recorded in the presence of P.W.10-Ulaganathan and one Arul. The confessional statement of A-1 is Ex.P-14. Based on the confessional statement, he recovered weapons and blood-stained clothes under cover of mahazar-Ex.P-42 to P-44 in the presence of P.W.10 and one Arul. On 22-7-97 at 5.30 hours at Bonkars street near Murugan Koil, he arrested A8- Kanagamani @ Kattandi, A-9-Kanmani, A-10 Sathia @ Sathiamurthy, A11-Panneer @ Panneerselvam and A-12-Muthu. They were interrogated and they admitted the offences and made a voluntary confessional statement. Based on the same, weapons M.Os.23 to 25 were recovered under cover of mahazar-Ex.P-45 in the presence of witnesses. M.Os., were sent to Court. On receipt of serological report and after getting final opinion from Dr.Balaraman-P.W.9 who conducted post-mortem, he recorded his statement on 22-12-97. On 19-5-98 he received a copy of identification parade from the Court. On 27-6-98 after perusal of the case records, he filed alteration report and charge-sheet under Sections 148, 302, 324 read with 149 I.P.C. against all the accused. Ex. P-52 is the alteration report.

3. Before the trial Court on behalf of the prosecution, P.Ws.1 to 14 were examined. Exs.P-1 to P-52 were filed and M.Os.1 to 33 were marked. The accused when questioned u/s 313 Cr.P.C., denied their complicity in the crime.

4. The trial Court on analyzing the materials available on record concluded that the prosecution has established the case beyond reasonable doubt and found Accused 1, 2, 3, 5, 6 and 8 guilty of offences under Sections 148, 449 read with 149 IPC, 302 read with 149 IPC; and A2 also found guilty u/s 324 I.P.C., and sentenced them as stated above. The others were acquitted. The conviction and sentence imposed on the convicted persons is the subject matter of challenge in this appeal.

5. Heard Mrs. Nalini Chidambaram, learned senior counsel for appellants 1 and 2 (Accused 1 and 2), Mr. C.S. Dhanasekaran for appellants 3 to 6 (Accused 3, 5, 6, and 8) and Mr. A.P. Suryaprakasam, learned Additional Public Prosecutor for Pondicherry.

6. Mrs. Nalini Chidambaram, learned senior counsel and Mr. C.S. Dhanasekaran, learned counsel for the appellants after taking us through the entire materials and the conclusion arrived at by the learned trial Judge, have raised the following contentions:

(i) P.Ws.1 to 4 are interested and partisan witnesses; hence the conviction based on their evidence cannot be sustained;

(ii) The arrest and confession of the accused and the recovery of the weapons became doubtful and they are to be eschewed from the consideration;

(iii) Non examination of Manikandan and Suresh who accompanied P.W.1 throughout the occurrence is fatal to the prosecution.

7. On the other hand, learned Additional Public Prosecutor submitted that it is a grave murder, all the accused after chasing the deceased from Subbiah statue to a house in Nellithope, caused brutal injuries which were spoken to by eye witnesses, namely, P.Ws.1 and 2 and there is no reason to disbelieve their version. He also contended that in addition to their evidence, recovery of blood-stained weapons and clothes which tallied with the blood group of the deceased accused probablise the case of prosecution and the learned trial Judge rightly accepted the same and no ground for interference.

8. We have carefully considered the rival submissions.

9. As per the prosecution case, the occurrence had taken place in two places, first (a) near Subbiah statute, next (b) inside the house in Nellithope. Before considering both the instances as spoken to by the prosecution witnesses, it is relevant to note that the motive for the occurrence as spoken to by P.W.1 is that the accused persons are on inimical terms with the deceased Selvam on the pretext that he was involved in the murder of one Dhena @ Thirunavukkarasu, who was there friend. The first occurrence, namely, near Subbiah statue was spoken to by P.Ws.1 to 4. Though learned senior counsel for the appellants vehemently contended that because of the relationship their evidence need not be considered, on this ground, the Court is not obliged to reject their evidence in toto. It is settled law that even if the witnesses are interested because of their relationship, their evidence cannot be rejected, but are to be more cautious in analyzing the truth. P.W.1 is the paternal uncle's son of the deceased. P.W.2 though it is claimed close friend of the deceased, it is seen that he is an independent witness. P.W.3 is not related to the deceased. P.W.4 is the cousin brother of P.W.1 and the deceased. P.Ws.1 to 3 are eye witnesses to the occurrence and P.Ws.1 and 2 are also injured witnesses.

10. It is the specific evidence of P.W.1 that on the date of occurrence i.e., on 10-7-97 at about 22.00 hours, when he was taking food along with Suresh and Manikandan as well as other friends at Anitha restaurant, Maraimalai Salai, near Nellithope, Pondicherry, he saw his brother, the deceased Selvam, Anthuvan, Felix and Babu-P.W.2 coming out of Patrick Wines shop, situated next to the hotel where he was taking food. They started proceeding towards Subbiah statue and near the statute, all the 12 accused armed with deadly weapons like Aruval and knife, etc. They intercepted his brother (deceased) at the Subbiah statue, A1 Karuna assaulted his brother Selvam with Aruval on the head, and again he assaulted on his hand. A-2-Bhaskar assaulted Babu with Aruval on his head. Thereafter, the deceased selvam in order to escape from that place, ran towards Nellithope and entered into a house in Kannara street. Though P.W.1 has stated that the occurrence near Subbiah statue was witnessed by himself and his friends Manikandan and Suresh, those two persons were not examined on the side of the prosecution. Learned senior counsel highlighted that they are the best

persons to speak about the occurrence and the non-examination of those persons is a fatal to the prosecution. Though these persons were not examined, however, the prosecution has examined other 3 persons, namely, P.Ws.2, 3 and 4 regarding the occurrence happened near Subbiah statue. P.W.2, who was inside the Bar-"Patrick Wines" at 21.30 hours on 10-7-97 along with the deceased Selvam and others, has explained that when they came out, he saw P.W.1-Manidandan and Suresh at Anitha hotel, near Patrick's Wines taking food. When they approached near the statue along with the deceased Selvam, A1-Karuna along with 10 others intercepted them. All of them were armed with deadly weapons like Aruval, knife, stick, etc. A1-Karuna assaulted the deceased Selvam on his head with Aruval; A2-Bhaskar assaulted P.W.2 with knife on his head. P.Ws.2, 3 and one Felix escaped via Kosapalayam. The deceased Selvam escaped through Nellithope. P.W.2 went to the Police Station and then to the hospital. He further deposed that when Selvam ran, he was chased by all the 10 accused persons.

11. According to P.W.3, at about 21.30 hours on 10-7-97 he accompanied P.W.2 and Felix and the deceased Selvam to Patrick Wines. After finishing drinks, when they came out of the Bar, he saw P.W.1-Samuvel and Manikandan and others taking food at Anitha hotel, very near to Patrick Wines. Then all the four went towards Subbiah statue. When they approached the statue, about 10 to 15 persons armed with deadly weapons like Aruval, knife, and club, intercepted them, A1 assaulted the deceased Selvam on the head and the latter ran towards Nellithope. P.W.2 also sustained injuries. A2-Baskar assaulted P.W.2 on the head with knife. P.W.3 and Felix ran towards bus-stand. According to P.W.4-Alukku @ Alexander, the deceased selvam is his brother (paternal uncle's son). He explained that on the date of the occurrence at about 22.30 hours P.W.3 came running and shouting that A1-Karuna assaulted the deceased Selvam near Patrick Wines and the injured Selvam escaped into Nellithope with bleeding injuries. Within minutes of this information, P.w.1 also came to his house and informed that A1, A2 and 10 others assaulted his brother-Selvam at Kannara street in Nellithope area. He further deposed that P.W.1 further stated that all the 12 persons were chasing the deceased Selvam who was running for his life. When selvam entered into a residential house at Kannara Street, the 12 persons armed with deadly weapons also entered inside the house and caused multiple injuries on the body of the said Selvam, resulting his instantaneous death.

12. The evidence of P.Ws. 1 to 4 clearly show that both the groups first went to Patrick Wine shop and then to Anitha restaurant for taking dinner. Prosecution witnesses saw the deceased and others going towards Subbiah statue and when they came near the statue, the accused who came to that place stabbed the deceased Selvam with Aruval on the head and P.ws.1 and 2 also sustained injuries. The fact of assembling of the accused persons near Subbiah statue and causing serious injuries to the deceased Selvam are spoken to by these witnesses and there is no reason to disbelieve their version.

13. Coming to the occurrence at inside the house in Nellithope, it is the definite evidence of P.W.1 that after the occurrence near Subbiah statue in which Selvam received head injuries, he (Selvam) ran and he was chased by all the 12 accused. P.W.1 also ran behind all the accused crying and shouting. At that time, the deceased Selvam entered into a open house at Kannara Street with bleeding injuries. According to him, all the accused persons who were chasing the deceased Selvam also entered into the same house and caused multiple injuries all over his body. P.W.1 also entered into the house and tried to stop the attack. But he also sustained injuries on his left fore-arm. He escaped from the scene and ran to Periyar Nagar and informed this to his brother Alukku @ Alexander-P.W.4. When he entered into the place of occurrence along with P.W.4 and others, he saw Selvam with bleeding injuries already dead. Thereafter, he went to the Police Station and gave a complaint-Ex.P-1. Regarding the occurrence inside the house at Kannara street, P.W.2 has also corroborated the evidence of P.W.1. 14. It is clear that the initial occurrence near Subbiah statue was spoken to by P.Ws.1 to 4 and regarding the brutal attack on the deceased inside the house at Kannara street near Nellithope was spoken to by P.Ws.1 and 2. It is relevant to note that the fact that P.Ws.1 and 2 sustained injuries in the said incident were treated by Dr. R. Chandrasekaran-P.W.14. During the examination, he found the following injuries on P.W.2:

"1. Lacerated injury on the occipital region V shape 3" in length skin deep. 2. Abrasion over right shoulder joint 1" x 1 ?" in size."

He issued Ex.P-36 wound certificate and according to him, both the injuries are simple in nature. He also examined P.W.1-Samuvel and found on him the following injuries:

"1. A cut injury skin deep 1 cm x 1 ? cm middle left fore arm. 2. Contusion 1 cm x ? cm x 1 ? cm middle of left arm."

He issued Ex.P-37 wound certificate. He opined that the injuries are simple in nature. On the same day, at about 3.10 A.M. he examined P.W.3-Anthuvan and found on him the following injuries:-

"1. A contusion below left eye with abrasion skin ? cm x ? cm in face. 2. Loss of tooth on the left side (1st molar)."

He opined that the injuries are simple in nature and Ex.P.38 is the wound certificate issued by him. He further deposed that the cut injuries mentioned by him in Exs. P-36 to P-38 can be caused by any sharp edged weapon, while the abrasion injuries can be caused by any blunt weapon. He also opined that the injuries can be caused in a scuffle i.e., when two persons fight with each other. The evidence of P.w.14 and the wound certificates-Exs.P-36 to P-38 clearly show that P.Ws.1 to 3 sustained injuries in the very same occurrence, whereas the deceased died due to brutal attack by the all the accused persons. The injuries sustained by P.Ws.1 to 3 corroborates their evidence with reference to both the occurrence, namely, one at Subbiah statue and another at inside the house at

Kannara street near Nellithope.

15. Learned senior counsel for the appellants would submit that inasmuch as P.w.2 has stated that he saw all the accused in the Police Station at 12.00 0" clock in the night of the occurrence, whereas in fact the accused were arrested after two days of the occurrence, his evidence is unreliable. It is true that in cross examination, P.W.2 has admitted that he saw all the accused in the Police Station at 12 0" clock in the night of the occurrence. Considering his entire evidence coupled with the statement of other prosecution witnesses as well as the evidence of P.Ws.13 and 15, investigation officers, as rightly stated by the learned trial Judge, mere statement of P.W.2 that all the accused in the Police Station on the night of the occurrence will not affect the recovery, when the same has been specifically spoken to by P.Ws. 13 and 15 and corroborated by P.Ws.10 and 11. Further, as rightly stated, that it is not suggested to P.W.15 that he is interested in the prosecution and got animosity against the accused. Inasmuch as the recoveries have been spoken to by P.W.15 and corroborated by P.Ws.10 and 11, independent witnesses and the same was rightly analysed and accepted by the learned trial Judge, we also concur with his conclusion and no reason to disbelieve the said recoveries. Accordingly, we reject the contention of the learned senior counsel for the appellants.

16. It is also relevant to note that Material Objects seized at the instance of the accused persons were sent for Serological test. Human blood was detected in M.O.12, blue colour T.C. pant of A-4 Selvam. Human blood was also detected in the baniyan-M.O.18 of A1-Karuna. In M.O.29, the full hand shirt of A6, human blood of "B" group was found. In M.O.20, the shirt of A-3-Jambu, M.O.21 the banian of A-5 and M.O.22, T.C. shirt of A7 human blood was found. Likewise, in the weapon M.O.13, identified by A1, human blood was detected. In M.O.14 identified by A3-Jambu, M.O.15 identified by A-6-Anbu, M.O.16-Veecharuvel identified by A5-Nehru, human blood of "B" group was found. In pursuance of the recoveries made at the instance of A-5 and A-6, the Material Objects were sent for Serological test and according to the serological report-Ex.P-51, the Veecharuval-M.O.23 contained human blood and no blood group could be detected in M.Os.24 and 25. In M.O.26, the polyester shirt of A-8 human blood was detected. A perusal of the serological report shows that human blood was detected in the weapon identified by A1 and A8 and human blood of group "B" was found on the weapons identified by A2, A3, A5, A6. Human blood was found on the clothes of A1, A3, A4, A5, A7 and A8 and human blood of "B" group was found in the clothes of A6. It is also relevant to note that the blood taken from the dead body of the deceased Selvam by P.W.9-Dr. Balaraman and the wearing apparels-M.Os.1 to 3 contained blood of the deceased. The shirt of the deceased was recovered from the dead body under cover of mahazar-Ex.P-3. It is clear that the recovery of blood stained weapon and blood stained clothes of the accused implicate A1, A2, A3, A5, A6 and A8. The serological report-scientific evidence also corroborates the evidence of P.Ws.1, 2 and 3 regarding brutal attack made on the deceased Selvam by the accused persons. All these aspects

have been rightly analysed by the learned trial Judge and we concur with the conclusion that the evidence of eye witness P.W.1 is corroborated by the evidence of P.Ws.2 and 3 and by the recovery of blood-stained weapons at the instance of the accused. The scientific report in the form of serological test also showed the presence of human blood which is the blood group of the deceased and the weapons identified also had human blood. As said earlier, the clothes seized and recovery contain blood-stains of "B" group which supports the case of the prosecution that the death was caused by cutting him indiscriminately with knife, aruval and other lethal weapons.

17. Though Mr. C.S. Dhanasekaran, learned counsel for Appellants 3 to 6 contended that there is no specific overt act by the prosecution witnesses against A-3, A-5, A-6 and A-8, in the light of our above discussion and of the assertion by P.Ws.1 to 4 that after the occurrence near Subbiah statue, all the accused chased the deceased Selvam and all of them went inside the house at Kannara street near Nellithope where the deceased Selvam was murdered by all the accused and the same was witnessed by P.Ws.1 and 2, we are of the view that A-3, A-5, A-6 and A-8 also involved in the gruesome murder of the deceased Selvam along with A-1 and A-2; hence we reject his contention and concur with the conclusion arrived at by the learned trial Judge.

18. We are satisfied that the prosecution has established and it is clear from the evidence of P.W.1 that A1 cut the deceased Selvam with Aruval on his head near Subbiah statue; A-2 cut P.W.2 with Aruval and after that the deceased started running towards Nellithope and in order to escape, he entered into an open house in Kannara street, Nellithope, the accused chased him, and trespassed into the said house and started cutting him indiscriminately. When P.W.2 intervened, he also was cut and he sustained injury. Inasmuch as all the accused chased the deceased even after cutting him near Subbiah statue and followed him, entered into the house where the deceased has taken shelter, mercilessly caused as much as 21 injuries as spoken to by P.W.9-Dr. R. Balaraman and evidenced from Ex.P-11-Post Mortem certificate, Ex.P-12 Chemical Examiner's report and Ex.P-13-final opinion and also of the fact that the Material Objects recovered were identified by the persons concerned which contained the human blood group of the deceased, we are satisfied that all those injuries were caused with the intention of all the accused in order to do away with the life of the deceased Selvam; hence the appellants, namely, Accused 1, 2, 3, 5, 6 and 8 were rightly found guilty of offences under Sections 148, 449 read with 149 I.P.C. and u/s 302 read with 149 I.P.C., and A2 u/s 324 IPC. We also concur with the sentence imposed on them which is proportionate to the acts of the accused viz., gang murder and they do not deserve sympathy or leniency at the hands of the Court. We agree with the conclusion of the learned trial Judge in all aspects and none of the arguments raised by the learned counsel for the appellants are acceptable. Consequently, the appeal fails and the same is dismissed.