

(2008) 10 MAD CK 0067
In the Madras High Court
Case No : Criminal Appeal No. 114 of 2006

Khader Moideen

APPELLANT

Vs

The State by the Inspector of Police

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 10 MAD CK 0067

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : R. Srinivas, Amicus Curiae, for the Appellant; P. Kumaresan, APP, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This appeal challenges the judgment of the VI Additional Sessions Division, Chennai made in S.C. No. 317 of 1999, whereby the sole accused/appellant stood charged, tried and found guilty u/s 302 IPC and awarded life imprisonment and to pay a fine of Rs. 1000/-, in default to undergo 3 months R.I.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) P.W.1 is the son of the deceased M.M. Johara. The sister of the accused was given in marriage to another son of the deceased. They were all living together within the jurisdiction of the respondent police station. On the date of occurrence, that was on 10.08.1998, P.W.1, due to illness, did not go to college and was staying in the house. At about 1.30 p.m., he saw through the window the accused coming inside the house. Immediately, the deceased asked the reasons for his coming. The accused replied that he just came to see them.

b) P.W.1 was hearing the voice of the accused and the deceased from the kitchen side. Within a few minutes, he heard the distressing cry of his mother and he

rushed there, where he found the accused stabbing the deceased with knife on the right side of her neck. He just went nearby to her rescue. At that time, the accused pushed him down and went through the backyard.

c) P.W.2 was also able to see the accused running away from the place of occurrence. Immediately, P.W.1 and others took the severely injured Johara to Vijaya Hospital, where they advised to take her to Royapettah Government Hospital. P.W.11, the Doctor attached to Royapettah Government Hospital, medically examined her and declared her dead. Ex.P.10 is the accident register.

d) P.W.1 proceeded to the respondent police station and gave Ex.P.1, the complaint to P.W.13, the Sub Inspector of Police. On the strength of Ex.P.1, a case came to be registered in Crime No. 2021 of 1998 u/s 302 IPC. Ex.P.13, the express F.I.R. was despatched to the Court. e) P.W.14, the Inspector of Police, on receipt of the copy of the F.I.R., took up the investigation, proceeded to the spot and made an inspection in the presence of the witnesses. He prepared Ex.P.3, the observation mahazar and Ex.P.14, the rough sketch. He also recovered bloodstained earth and sample earth from the place of occurrence under a cover of mahazar. He proceeded to the Government Hospital, Royapettah and conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared Ex.P.15, the inquest report. Then, the dead body was sent for the purpose of autopsy.

f) P.W.12, the Doctor attached to the Government Hospital, Royapettah, on receipt of the requisition, has conducted post-mortem on the dead body of the deceased and has issued Ex.P.12, the post-mortem certificate, wherein he has opined that the deceased would appear to have died of injuries sustained by her.

g) Pending investigation, P.W.14 arrested the accused on 12.8.1998. The accused came forward to give confessional statement, which was recorded in the presence of the witnesses, the admissible part of which was marked as Ex.P.16. Pursuant to the same, the accused produced M.O.1, knife, M.O.8, gloves and M.O.9, shirt, which were recovered under a cover of mahazar. The accused was sent for judicial remand. All the material objects recovered were subjected to chemical analysis by the Forensic Science Department. On completion of the investigation, the Investigating Officer has filed the final report.

3. The case was committed to the court of Sessions and necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined 14 witnesses and relied on 16 exhibits and 9 M.O. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. After hearing the learned Counsel on either side and looking into the materials available, the trial court took the view that the prosecution has proved the case beyond reasonable doubt and has awarded punishment as referred to above. Hence this appeal at the instance of the

appellant.

4. Advancing arguments on behalf of the appellant, the learned Counsel has made the following submissions:

a) According to the prosecution, the occurrence has taken place on 10.08.1998 at about 1.30 p.m. in the residence of the deceased. Though P.W.1 has not witnessed the entire occurrence, on hearing the distressing cry, he rushed to the scene of occurrence, namely the kitchen of the house, where he found the accused standing with the bloodstained knife in front of his mother Johara and he went to her rescue, but the accused pushed him down and left the place of occurrence. Thus, P.W.1 was shown as eyewitness. Ex.P.1 is the first report given by P.W.1, but from the evidence, it could be seen that Ex.P.1 could not have been the first information. According to P.W.1, he along with others took the severely injured to Vijaya Hospital, wherefrom she was taken to the Government Hospital, Royapettah, where she was declared dead and thereafter, he went to the police station and gave an oral information and the police proceeded to the house of the accused and recovered the bloodstained clothes and thereafter, P.W.1 went to the police station at about 5.00 p.m. and gave Ex.P.1, the written complaint. From the evidence of P.W.1, it would be quite clear that he has already given an information to the police, which would satisfy the legal requirement u/s 154 Cr.P.C. and thus, Ex.P.1, report was only the second information and hence it could not have been the first information. Thus, what are all investigation made by the Investigator subsequent to Ex.P.1, the report, were of no legal consequences and cannot be given any weight at all.

b) In the instant case, according to P.W.1, the accused threw the bloodstained knife in the back portion of the house and ran away, but the prosecution would claim that pending investigation, the accused was arrested and on his confession, he produced M.O.1, knife, which was recovered. Thus, the evidence of P.W.1 would clearly belie the arrest, confession and also the recovery of knife. Apart from that, gloves was recovered from the accused on his confession, according to the prosecution. But, nowhere P.W.1 or P.W.2 or anybody have spoken that the accused was wearing gloves at the time of occurrence. Thus, all would go to show that the prosecution has not proved the case beyond reasonable doubt and hence the benefit should be given to the accused. The trial court has not considered the evidence proper and has taken an erroneous view and hence the appellant is entitled for acquittal in the hands of this Court.

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

6. It is not in controversy that one Johara, the mother of P.W.1, following an incident that took place in her house at about 1.30 p.m. on 10.08.1998, was taken to Vijaya Hospital and thereafter, she was taken to the Government Hospital, Royapettah, where she was declared dead. Following the inquest made by the Investigating Officer, the dead body was subjected to post-mortem by

P.W.12, the Doctor, who has given his categorical opinion not only in Ex.P.12, the post-mortem certificate, but has also deposed before the court that the deceased would appear to have died of injuries external and its corresponding internal injuries what was found on her neck. Thus, the deceased died out of homicidal violence. The fact that Johara died out of homicidal violence was never disputed by the appellant/accused at any stage of proceedings. Hence it has got to be recorded so.

7. In order to substantiate the fact that it was the accused who cut the deceased Johara with knife, the prosecution examined two witnesses, namely of P.Ws.1 and 2. According to P.W.1, they were actually residing in the first floor. On the date of occurrence at about 1.30 p.m., he saw the accused opening the front gate and entering inside the house and he was able to hear that the deceased questioned the accused about his visit and the accused replied that it is an usual visit and after five minutes, he heard the distressing cry from the kitchen area and when he rushed there, he found the accused standing with knife in front of his mother Johara and he saw bleeding injuries on the neck of his mother. Thus, this part of the evidence, despite cross examination in full, remained unshaken. The evidence of P.W.1 has inspired the confidence of the Court and thus, it was rightly accepted by the trial court. Apart from the evidence of P.W.1, the evidence of P.W.2 is also available. P.W.2 has seen the accused running from the place of occurrence. Further, this part of the ocular testimony stood fully corroborated with the evidence of post-mortem Doctor and the post-mortem certificate. As per the post-mortem certificate, the only one injury on the neck and its corresponding injury was found to be fatal. This Court is of the considered opinion that this part of the evidence put forth by the prosecution would be sufficient to point out the guilt of the accused.

8. The contention put forth by the learned Counsel for the appellant that Ex.P.1 report could not be the first information and hence whatever the investigation done subsequent to Ex.P.1, report, was of no legal consequence, cannot be accepted. From the evidence of P.W.1, it could be seen that after the occurrence, his mother was taken to Vijaya Hospital and thereafter, she was taken to the Government Hospital, Royapettah, where she was declared dead and he passed on an oral information. The Court is of the considered opinion that no corresponding suggestion was put to the Sub Inspector of Police or there is nothing to infer that any information, which would satisfy the legal requirement u/s 154 Cr.P.C. or which could be termed as first information on cognizable offence, was given to police officer. Under these circumstances, the oral information passed on by P.W.1 to the police cannot be said to be the first information. At this juncture, it is pertinent to point out that Johara was medically examined by P.W.11, the Doctor at the Government Hospital, Royapettah and Ex.P.10, accident register was issued by P.W.11, the Doctor, wherein it has been stated that the deceased was assaulted by a known person with knife at about 1.30 p.m. Thus, it seems to be the earliest information. Further, the first information was given by P.W.1 by way of Ex.P.1, on the

strength of which a case came to be registered and hence the contention put forth by the learned Counsel for the appellant has got to be rejected.

9. So far as the second contention as to the alleged arrest, confessional statement and the recovery is concerned, the court has to necessarily agree with the learned Counsel for the appellant for the simple reason that even from the evidence of P.W.1, it would be quite clear that the accused threw the weapon of crime, namely the knife and ran away from the place of occurrence, but the prosecution would claim that on arrest, the accused produced the bloodstained knife. Thus, from the evidence of P.W.1, the claim of the prosecution that pursuant to the arrest and confessional statement, the accused produced M.O.1, knife, has got to be rejected.

10. Apart from that, so far as the third contention as to the recovery of gloves is concerned, P.Ws.1 and 2 have not spoken about this fact. When the occurrence has taken place, in which the mother of P.W.1 was attacked with knife, it would be quite natural that the witnesses were in anxiety and they could not have noticed whether the accused was wearing gloves or not and therefore, this contention does not assume any importance in the instant case. Thus, the prosecution was able to show that it was the accused, who went to the house of the deceased and attacked her with knife and hence the death has ensued as a direct consequence. In the instant case, when the accused went to the house of the deceased, he was enquired about his visit, for which he replied that it is an usual one, but he was having knife in his hand and also stabbed her. Thus, it would be quite clear that it was a pre-planned one and hence the trial court has found him guilty u/s 302 IPC and has awarded life imprisonment, which was perfectly correct in the eye of law.

11. In the result, the judgment of the trial court does not require any disturbance and hence it is confirmed. Accordingly, this criminal appeal is dismissed.

12. Mr. R. Srinivas, Amicus Curiae counsel is entitled to get remuneration from the Tamil Nadu State Legal Services Authority, Madras.