
(2007) 07 MAD CK 0211

In the Madras High Court

Case No : Criminal Appeal (MD) No. 447 of 2006

Manikandan, Mani Samy and Sudalai

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120, 147, 148, 302, 34

Citation : (2007) 07 MAD CK 0211

Hon'ble Judges : T. Sudanthiram, J;D. Murugesan, J

Bench : Division Bench

Advocate : A.P. Muthupandian, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—The appellants who stand convicted u/s 302 read with 34 IPC and sentenced to undergo life imprisonment and to pay a

fine of Rs. 2,000/- each and in default to undergo six months rigorous imprisonment by the learned Additional District and Sessions Court (Fast

Track Court-II) Thoothukudi, in SC.No.96 of 2004, have preferred this appeal against the said conviction and sentence.

2. The case of the prosecution is that on 02.08.2000, at about 11.00 p.m., due to previous enmity between A-4 and the deceased, the accused

persons including A-4, six in number, criminally conspired to kill the deceased and on 04.08.2000, at about 11.00 p.m., with a common intention

to cause the death of the deceased, the accused persons armed with deadly weapons, waylaid the deceased while he was returning to home in

TVS-50. A-1 stopped the vehicle of the deceased with a stick and uttered the words that the deceased had come and he should be finished off.

Saying so, A-1 attacked the deceased with an aruval on his neck, A-2 attacked with an aruval on the back side of the head and A-3 attacked the

deceased with an aruval on the stomach, right side shoulder, left thigh and back side of the right shoulder. A-1 beat the deceased on his head with

a stick and caused the instantaneous death of the deceased.

3. In order to prove its case, the prosecution examined 22 witnesses, marked 33 exhibits and produced 10 material objects.

4. The evidence let in by the prosecution, in brief is as follows:

(a) P.W. 1, is the resident of North Subramaniyapuram. He had deposed that he is working as an Electrician in a private company and that the

deceased is his paternal uncle. He also knows the enmity between the deceased and the accused. He had also stated that A-4 is paternal uncle,

one Subbaiah, is his father's younger brother. As already the said Subbaiah died, there was no talking terms between the family of A-4 and the

said Subbaiah's family. A-4's paternal aunt, one Mariammal, the wife of the said Subbaiah, used to graze cows along with P.W. 8-Eganthi,

the paternal aunt of P.W. 1. Even A-4 had no talking terms with the said Mariammal. A-4 did not like this activity of his paternal aunt, since he had

a wrong impression about his aunt. He also stated that three months prior to the occurrence, the deceased went to Kayatharu Police Station and

lodged a complaint against A-1 and A-4 for attempt to murder. That case ended in a compromise. P.W. 1 had further stated that on 04.08.2000

at 11.00 p.m., P.W. 1 along with one Balamurugan and P.Ws. 2 and 3 went to see Villupattu which was going on in Sudalaimadasamy

temple at Kadambur Road. While they were walking near the bridge in Kadambur Road, they saw A-1 to A-3 standing under the tamrind tree

and armed with aruvals. A stick was lying by the side of A-1. Fearing on seeing them, they hid themselves. At that time, the deceased Natarajan

was coming in his TVS-50 motor cycle. On seeing the deceased, A-1 uttered that the deceased is coming and he should be finished off. While

saying so, he took the stick and beat the vehicle due to which the deceased fell down. A-1 attacked the deceased with the aruval on his neck

several times. A-2 attacked the deceased on his head with the aruval repeatedly. A-3 attacked the deceased on his right side of the stomach, right

thigh with the aruval several times. After the occurrence the accused ran away

from the place of occurrence. P.Ws. 1 to 3 and the said

Balamurugan went near the body of the deceased and thinking that the deceased had died, they ran to the village and informed the family members

of the deceased and again came to the scene of occurrence. P.Ws. 1 and 2 went to Kayatharu Police Station and gave a complaint, Ex. P. 1.

Again on 05.04.2000, at 1.30 a.m., they went to the Police Station where the Sub Inspector of Police was on duty. Again P.W. 1 narrated about

the occurrence which was recorded by the Sub Inspector of Police and they had affixed their signatures. At 2.45 a.m., P.Ws. 1 and 2 came to the

scene of occurrence. He also stated that the deceased was working as a driver in Kayatharu Transport Corporation and A-4 was working as a

driver in Tirunelveli Transport Corporation. P.W. 1 also deposed that the sister of A-4 was given in marriage to A-2; A-5 and A-6 are A-4's

father's sister's sons and A-3 is the brother of A-4.

(b) P.W. 2 is the resident of the same village. He is the brother of the deceased Natarajan. He had deposed that he knows all the accused since

they are also the residents of the same village. Due to previous enmity, three months prior to the occurrence, A-1 and A-4 went to the house of the

deceased and threatened him that he will be done to death, for which the deceased gave a complaint to Kayatharu Police Station. The Inspector of

Police called A-1 and A-4 and enquired them. After giving warning, the Inspector of Police sent them to home. This made A-4 to get angry with

the deceased. P.W. 2 also deposed about the occurrence in the same manner as spoken by P.W. 1.

(c) P.W. 3, who is the resident of the same village, also deposed about the occurrence in the same manner as spoken by P.Ws. 1 and 2. He also

stated that he and one Balamurugan were at scene of occurrence after the occurrence.

(d) P.W. 4 is also the resident of the same village. He had deposed that he knows both the deceased and the accused. He also stated the previous

enmity between the deceased and A-4. Since the coconuts in the field of one Mohandoss were being robbed often, P.W. 4 and the said

Mohandoss went for safeguarding the field. At that time, when they were passing nearby the field of A-4, they found all the accused sitting in the

pial of the house situate in the field of A-4. Since all the accused were talking

about the deceased Natarajan, P.W. 4 and the said Mohandoss hidden themselves behind the wall and heard their conversations. A-4 told that since the deceased was giving trouble by going to Police Station, he should be finished off. A-4 also told that he will go for his work on 03.08.2000 and will be returning only on 05.08.2000. In the meanwhile, he instructed the others to kill the deceased on 04.08.2000. A-4 told A-5 and A-6 to give torch light signal when the deceased is coming near the place of occurrence. He also instructed A-1 to attack the deceased with stick and aruval; A-2 to attack the deceased on his neck and A-3 to attack on the deceased leg in order to prevent the deceased from running. He also told them that he will take A-1 to A-3 and A-5 and A-6 on bail. On hearing this criminal conspiracy, P.W. 4 and the said Mohandoss went to inform P.W. 6, the brother of the deceased on 03.08.2000. Since P.W. 6 was out of station, they neither informed him nor to anybody. On 04.08.2000, they came to know about the murder of the deceased and went to the scene of occurrence. They also informed the conspiracy to the police, when enquired.

(e) P.W. 5 is the resident of North Sonarpet and he is doing coolie work. On the date of occurrence, he and one Murugan went to North

Subramaniyapuram to attend some personal work. When they were nearing the bridge which was nearer to the place of occurrence, they saw A-5

and A-6 holding lighted torch. When enquired, A-5 and a-6 said nothing and they went away. When P.W. 5 reached the village, he came to know

about the death of the deceased in the place of occurrence, where they enquired A-5 and A-6. Suspecting both A-5 and A-6, he informed the

police about them during enquiry.

(f) P.W. 6, is also the resident of the same village and he is the elder brother of the deceased. He also deposed about the previous enmity between

the deceased and A-4 and the complaint lodged by the deceased in that regard. He had also stated that on 02.08.2000 and 03.08.2000, he went

to his office at 8.00 a.m. and returned home late night. On 04.08.2000, before leaving home for his job, he was informed by his wife that P.W. 4

and one Mohandoss came in search of him. P.W. 6 did not meet them on that day. After completing his official work, he went to Chennai to attend

his personal work. On reaching Chennai on 05.08.2000, he received the

information about the murder of the deceased committed by the accused.

On 06.08.2000, he went to Kayatharu Government Hospital and saw the dead body of the deceased. Later P.W. 4 and the said Mohandoss

informed P.W. 6 about the conspiracy of the accused persons.

(g) P.W. 8 who is the resident of the same village, had deposed that her first husband had died in a motor vehicle accident and that she started

living with the deceased. She had stated that he knows the accused party. She had also further stated that she had no issues through her first

husband and she had two children after she started living with the deceased. The deceased was already married and he got three children. Since

A-4 did not like the friendship of his paternal aunt, one Mariammal with P.W. 8, the accused started fighting with the members of the deceased

family. So, the deceased gave a police complaint in that regard. This increased the rage of A-4 and on 04.08.2000, she came to know that the

deceased was murdered and thereafter, she along with her son, went to the scene of occurrence.

(h) P.W. 15 was the Branch Manager of the Tirunelveli Transport Corporation during the relevant period. He had deposed that on 04.08.2000,

A-4 was driving the bus bearing No.143, from Villupuram and on 05.08.2000, at 5.00 a.m., he reached Tirunelveli. He had also stated that on

02.08.2000, A-4 was on weekly holiday and Ex. P. 11 is the letter given by P.W. 15 in that regard.

(i) P.W. 16 was the Sub Inspector of Police of Kayatharu Police Station during the relevant period. On 15.01.2000, the deceased gave a

complaint against the accused party. The Sub Inspector of Police received the complaint and gave a receipt bearing No.19 of 2000. He enquired

the matter and a compromise was arrived at between the parties.

(j) P.W. 22 was the Inspector of Police of Kayatharu Police Station during the relevant period. He has deposed that on 05.08.2000 at 1.30 a.m.,

while he was in duty, P.W. 1 and P.W. 2 came and gave a statement. The said complaint is marked as Ex. P. 1 based on which a case was

registered in Crime No.269 of 2000 for the offence u/s 302 IPC. Ex. P. 21 is the First Information Report. The First Information Report was sent

to the learned Judicial Magistrate No.1, Kovilpatti at 2.30 a.m. on the same day through P.W. 17 and the copy of the First Information Report

was sent to the higher officials. On the same day at 2.45 a.m. he went to the scene of occurrence and prepared Ex. P. 2 - the Observation

Mahazar and Ex.P.2 - the rough sketch. From 4.15 a.m. To 7.15 a.m., he conducted inquest on the dead body of the deceased in the presence of

the witnesses and panchayatdars and prepared Ex. P. 23 - the Inquest Report. The Investigating Officer sent the dead body for postmortem along

with a requisition under Ex. P. 18.

(k) P.W. 19, who was the doctor at Kayatharu Government Hospital during the relevant point of time, received the requisition on 05.08.2000 at

8.15 a.m., from the Investigating Officer to conduct postmortem on the dead body of the deceased. She commenced the postmortem at 1.00

p.m., and gave Ex. P. 19 - the Postmortem Certificate, wherein she found the following injuries:

The face on the right side being crushed; lower jaw and the tongue were cut.

EXTERNAL INJURIES:

1. On the back of the neck bones 1 and 2 were cut and it extended to the front side and the neck was fully severed and only a small piece of skin

in the front was attached. The length of the cut around the neck was 40 cm.

2. An incised wound of 4cmx2cmx2cm on the posterior side of the right shoulder.

3. A deep incised wound 1cmx6ccmx8cm from the middle of the right thigh traverse towards the back.

4. An abrasion on the right elbow.

5. A deep incised wound 6cmx4cmx4cm about the knee on the posterior side of the left thigh.

6. The frontal portion of the head being crushed; the frontal bone was fractured and the right eye was damaged.

7. An incised wound 3cmx2cmx2cm on the left side of the forehead.

8. A deep incised wound on the right side of the stomach and it had traversed from right side upper portion to posterior side of the stomach with

16cmx12cmx12cm through which the intestine has come out.

The doctor had opined that the deceased would appear to have died due to injuries NO.1,6 and 8 and due to shock and haemorrhage due to all

injuries combined.

(l) P.W. 22, the Investigating Officer, continued the investigation and on

5.8.2000, at 7.30 p.m., he recovered the blood stained earth and the sample earth under the cover of the Athakshi. He also recovered the TVS-50 at 8.00 p.m. in the presence of the witnesses under the cover of the Athakshi, Ex. P. 24. On 07.08.2000, he came to know that A-1 has surrendered before learned Judicial Magistrate, No.4, Tirunelveli and on 09.08.2000, A-2 surrendered before the same Court. On 11.08.2000, A-2 was taken into police custody and the accused came forward to give the confessional statement, the admissible portion of which is marked as Ex. P. 4, pursuant to which the Investigating Officer recovered the aruval. A-2 was sent for judicial remand. On the same day, the Investigating Officer came to know that A-3 has surrendered before the learned Judicial Magistrate, NO.4, Tirunelveli. On 12.08.2000 at 6.00 a.m., he arrested A-5 who came forward to give a confessional statement, the admissible portion of which is marked as Ex. P. 25 pursuant to which he recovered aruval. A-5 was also sent for the judicial remand. On 17.08.2000, he took A-1 into police custody who came forward to give a confessional statement, the admissible portion of which is marked as Ex. P. 8, pursuant to which the Investigating Officer recovered the aruval and stick under the cover of the Athakshi. The materials recovered from the place of occurrence and from the dead body of the deceased and the material objects recovered pursuant to the confessional statements of the accused were all subjected to chemical analysis, which resulted in two reports, viz., Ex. P. 16 - the Chemical Analyst Report and Ex. P. 17 - the Serologist Report. The Investigating Officer altered the case to one under Sections 147, 148, 302 and 120 IPC and the Express First Information Report, Ex. P. 27 was sent to the Court and to the higher officials. On 11.10.2000, after completing the investigation, he laid the final report against the accused.

5. The accused were questioned u/s 313 of Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses against them. He denied them as false. On the side of the deceased D.Ws.1 to 5 were examined and Exs.D1 to D6 were marked.

6. The evidence of the defence witnesses in brief, is as follows:

(a) D.W. 1 has deposed that he was working as the Motor Vehicle Inspector Grade-I, in the Regional Transport Office, Thoothukudi. He had

further deposed that he had inspected the vehicle TVS-50 and on inspection, he could not see the Registration number of the vehicle since it was damaged. He had also spoken about the damages of the vehicle.

(b) D.W. 2 is the son of A-3 and he is the resident of Ratchanyapuram during the relevant period of time. He had deposed that the festival of the

Thoothukudi Madha Church commenced on 28.07.2000 and ended on 05.08.2000. D.W. 2 had invited his father A-3 and on 03.08.2000, at

5.30 p.m., A-3 came to the house of D.W. 2. On 04.08.2000, A-3 told him that he is leaving for Kayatharu and so saying, he left D.W. 2's

house. On 05.08.2000 at 6.00 p.m., the neighbour of D.W. 2, on reading the newspaper, came to his house and informed that his father had been

involved in a murder case. He had also deposed that at the time when his neighbour came and informed him, he along with his wife, uncle and A-3

were present in the house. He also stated that it was correct to say that his father had left for Kayatharu on 04.08.2000.

(c) D.W. 3, is the resident of Pudukottai and he had deposed that the distance from the place of occurrence and his residence is two furlong. He

also stated that no festival was conducted in the temple and no ½ Villupattui ½ was going on. If there was a function, the temple management

would keep loud speakers. But, no such event had occurred. He further stated that the festival was conducted by the Aachari community and the

Thevar community people had nothing to do with that festival. He stated that A-4 was the Panchayat President in that village and he used to solve

the problems in the village amicably. He also stated that he know the love affair of the daughter of P.W. 6 with somebody but he did know the fact

whether a criminal conspiracy was hatched by P.W. 6 and the deceased to kill the boy who loved the daughter of P.W. 6. He also stated that A-4

solved that problem smoothly and after that, there existed no relation between the accused and the deceased. He had further stated that he did not

know whether there was any dispute between a-4 and the deceased with regard to the property or with regard to the love affair of the P.W. 6's

daughter.

(d) D.W. 4 had stated that on 04.08.2000 he received summons from the Court to produce the General Diary and also the Wireless Message

Register. But, both the records could not be produced since five years had lapsed

and they have been destroyed. Whether any record after the destruction is available is also not known. He has also stated that the number in the First Information Report would be serial. The number in Ex.

P. 21 is 522407 relates to the crime No.269 of 2000 registered on 05.08.2000.

(e) The accused who had chosen to examine himself as D.W. 5 had deposed that his name was Balakrishnan and in the school record, it was also

stated to that effect. Ex. D2 is the Birth Certificate of his daughter in which his name is mentioned as Balakrishnan. He has also produced Ex. D3,

the Community Certificate, in which his name is mentioned as Balakrishnan.

7. The learned Counsel for the appellant contended that P.Ws. 1 to 3, the eyewitnesses to the occurrence are only the chance witnesses and they

could not have witnessed the occurrence. Their version that they went to the scene of occurrence in order to listen to the festival in the temple

festival is falsified by the evidence of D.W. 3. The conduct of P.Ws. 1 to 3 also are not natural. The learned Counsel for the appellants also

submitted that there was no motive for A-1 to A-3 against the deceased and the motive was shown by the prosecution against A-4 who had been

acquitted. The learned Counsel for the appellants also pointed out the serious infirmity in the serial number of the First Information Report, Ex. P.

21 comparing to the serial numbers in Exs.D4 and D5, the First Information Reports relating to some other crime numbers.

8. The learned Additional Public Prosecutor was also heard with regard to the contentions raised by the learned Counsel for the appellant.

9. Learned Additional Public Prosecutor had submitted that immediately after the occurrence at 11.00 p.m., the First Information Report was

registered at 01.30 a.m. and it had reached the Court at 5.00 a.m. and there was no delay in the First Information Report. The evidence of P.Ws.

1 to 3 are also consistent. With regard to the conduct of P.Ws. 1 to 3, the learned Additional Public Prosecutor submitted the evidence of D.W. 3

does not affect the case of the prosecution and D.W. 3 is neither a prominent person in the village nor a reliable witness.

10. We have gone through the entire evidence and materials available in this case and carefully considered the rival submissions made by both

parties.

11. The evidence of P.Ws. 1 to 3 with regard to the appellants who are arrayed

as A-1 to A-3 are consistent. The attack on the deceased by A-1

to A-3 with weapons is spoken by all the three witnesses. The evidence of P.Ws. 1 to 3 is also corroborated by the medical evidence given by

P.W. 19 and Ex. P. 19 - the Postmortem Certificate. The deceased had sustained eight injuries and died due to that injuries. Though it was

submitted by the learned Counsel for the appellants that P.Ws. 1 to 3 are the chance witnesses, actually, their evidence establishes the presence of

P.Ws. 1 to 3 at the scene of occurrence. Though P.W. 1 admits that he was residing at Tirunelveli as his father was employed in Tirunelveli, also

stated that he was residing at North Subramaniyapuram at Kovilpatti. There was no evidence to show that on the date of occurrence he was at

Tirunelveli.

12. The contention of the learned Counsel of appellants that the evidence of P.Ws. 1 to 3 that they went together in the night hours in order to

listen to the Villupatturi festival, which was arranged in the temple festival is false as D.W. 3 who is the resident of Pudukottai had stated that on the date of

occurrence, no Villupatturi festival was arranged is to be analysed. A perusal of the evidence of D.W. 3 shows that he was interested towards the

accused and he was residing in a place situate two furlong away from the scene of occurrence. He is not a person attached to the temple

Management. Therefore, the evidence of D.W. 3 cannot be accepted.

13. With regard to the contention of the learned Counsel for the appellants that there was no motive for the appellants/A-1 to A-3 to attack the

deceased and the motive shown by the prosecution was only against A-4, who was acquitted, is not a ground for rejecting the evidence of

eyewitnesses if the evidence of the eyewitnesses are reliable and if the occurrence is established, then the motive is immaterial.

14. With regard to the serial numbers printed in the First Information Report, Ex. P. 21 related to this case and the serial numbers in Ex. D4 and

D5 which are related to some other cases, if seen, it is true that with regard to the date and time of registration of those cases, they do not come in

series, i.e., according to the serial number. It is true that it is not known how the First Information Report book is used by the Police Authorities.

P.W. 22, the Investigating Officer also admits in the cross-examination that the First Information Report prepared on 05.08.2000 at 1.30 a.m. in

Ex. P. 21, contains serial number 522407 and the First Information Report prepared on 05.08.2000 at 4.30 a.m., in Ex. D4 contains serial number

522425. But, the Investigating Officer is not able to give any explanation as to how these serial numbers are used.

15. As far as the registration of the First Information Report is concerned, in the normal course, the officer registers such First Information Report

shall follow instruction 560 of the Madras Police Standing Orders, which reads as follows:

560 : INSTRUCTION REGARDING FIRST INFORMATION REPORT:

(1) Cases entered in the First Information Report Book will be given a consecutive number and this number will constitute the crime number for the purpose of subsequent records.

(2) The thumb-impression of the informant will usually be taken only in the case of illiterate persons.

(3) In the case of complaints a copy of a First Information Report should be furnished free of charge to the complainant or informant under proper acknowledgement immediately after the complaint is registered.

16. The consecutive serial numbers intended to be used for registration of First Information Report is to ensure the genuineness of the First

Information Report, particularly, with regard to the time and date of occurrence. It is a procedure to be adopted and followed strictly by the police

officers only to keep a check on any manipulation in registering the complaint as first information. Any lapses on the part of the police officer may

result in doubting the very bona fide of the First Information Report as to the time and date of occurrence and may result in the Court disbelieving

the very First Information Report. However, it cannot be considered to be a general rule in all cases as it depends upon the facts and

circumstances of the case. A mere irregularity and the sequential discrepancy in the serial numbers may not affect the case of the prosecution if the

prosecution is able to establish its case through other concrete evidence either oral or documentary. As we have already found that the evidence of

P.Ws. 1 to 3 are acceptable and the cross-examination of those witnesses does not discredit their version, we consider that the variation in the

serial numbers has not affected the prosecution case against A1 to A-3 in this case. However, this does not deter from observing that the police

officer who is in-charge of registering the case at the relevant point of time should ensure that the serialim of numbers for registering the first

information should be strictly adhered to as any variation may affect the prosecution case in future.

17. The reasons given by the Trial Court for convicting the accused No.1 to 3 are acceptable and we do not find any infirmity in the judgment

delivered by the Trial Court. As there is not merit, we confirm the conviction and sentence passed by the Trial Court against the

appellants/accused.

18. In the result, the appeal is dismissed.