
(2006) 10 MAD CK 0122
In the Madras High Court
Case No : Criminal Appeal No. 45 of 2005

Murugan @ Balamurugan

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 323

Citation : (2006) 10 MAD CK 0122

Hon'ble Judges : P.D. Dinakaran, J;M. Thanikachalam, J

Bench : Division Bench

Advocate : M. Venkataraman for C. Vijayakumar and P. Pugalenth, for the Appellant; N.R. Elango, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The appellant/accused in S.C. 226 of 2003 on the file of learned District and Sessions Judge, Nagapattinam,

questioning the correctness of judgment of conviction and sentence dated 8.1.2004 rendered in the above said sessions case, has preferred the

above appeal.

2. The accused Murugan @ Balamurugan, along with other accused Natarajan, Suresh, Murali, Ravisankar and Mariappan, due to previous

enmity with the deceased Ramasamy Thevar, in execution of the criminal conspiracy that took place on 15.10.1999 at 8.00 p.m. among

Natarajan, Suresh and Mariappan at Ravisankar's lathe shop, on 16.10.1999 at 7.00 a.m. when the deceased Ramasamy Thevar was entering Sri

Rajagopalasami Perumal temple, Sri Thirinenthira Thajapujaveera Anjeneyar Temple at Ananthamangalam, attacked him with aruval, with the

intention to murder and caused his instantaneous death and thereby committed the offence punishable u/s 302 IPC.

3. The accused Murugan @ Balamurugan was originally arrayed as 4th accused in S.C. No. 293 of 2002 and since he remained absconded, the

trial Judge split up the case against him and numbered it as S.C. No. 226 of 2003. Of the other accused, the accused Mariappan was reported

dead. The remaining accused Natarajan, Suresh, Murali and Ravisankar were tried in S.C. No. 293 of 2002 and of them, the accused Natarajan,

Suresh and Murali were convicted by the trial Judge, by judgment of even date, against which they have preferred appeals in CrI.A. Nos. 266 of

2004 and 46 of 2005, which are also disposed of by us today by a separate judgment. The other accused Ravisankar was acquitted by the trial

Court.

4. The prosecution case, in brief, is as under:

4.1. The deceased Ramasamy Thevar was a resident of Mayiladuthurai. He was the Town Secretary of A.D.M.K., a political party and the

Chairman of Land Development Bank. He was also the President of Rickshaw Pullers' Association. P.W.3 Rajeswari is his wife.

4.2. There were frequent quarrels between the brother-in-law of Ramasamy Thevar, by name, Girisankar (since died) and the accused party.

P.W.9, when he was the Sub Inspector of Police, Mayiladuthurai on 21.4.1998 registered a case against one Giri @ Shankar and Mathiazhagan,

relatives of Ramasamy Thevar on the complaint given by the accused Balamurugan in crime No. 444 of 1998 under Sections 147, 148, 341, 323,

324, 459 and 307 IPC.

4.3. The deceased Ramasamy Thevar often told his wife P.W.3 that since the criminal case filed charging him of murder of one Duraikannu, a

close associate one Natarajan (1st accused in other case) ended in acquittal, he expected problems at the hands of the said accused Natarajan.

4.4. On 16.10.1999 at 6.00 a.m., he, along with P.W.1 Muniandi, P.W.2 Ramu and others went in a TATA Sumo car to Sri Anjaneyar Temple at

Ananthamangalam. One Dharmadoss drove the car. They reached the temple at about 7.00 a.m. Ramasamy Thevar was going to the temple about

10 ft. ahead of others. When Ramasamy Thevar was about to enter the temple, the accused Balamurugan along with the accused in other case,

viz., Natarajan, Suresh and Murali, armed with weapons, came and attacked Ramasamy Thevar indiscriminately. The accused Balamurugan cut

the deceased Ramasamy Thevar on his neck, head and flank with aruval. The accused in other case also cut him. Since the accused threatened, the

persons accompanied Ramasamy Thevar stayed away. Then, all the accused persons left the scene in two cars. Ramasamy Thevar was found

dead on the spot with cut injuries.

4.5. One Mathiazhagan, a relative of the deceased, who died subsequently, went to Police Station to give complaint. Darmadoss and Soori went

to inform the relatives of the deceased. P.W.5, the person collecting fees for parking cars at the temple, saw the deceased lying dead. Being

informed, P.W.3 wife of the deceased visited the scene and saw the dead body of Ramasamy Thevar.

4.6. On 16.10.1999 at 8.00 a.m., P.W.20 Inspector of Police registered a case in Crime No. 424 of 1999 under Sections 147, 148 and 302 IPC

on the basis of complaint Ex.P-13 given by Mathiazhagan. He prepared Ex.P-14 printed F.I.R. and forwarded the same to the Court concerned

through P.W.11, Head Constable, who handed over the same to the Judicial Magistrate, Tiruvarur since the jurisdictional Magistrate, viz., Judicial

Magistrate No. 2, Mayiladuthurai was on leave.

4.7. P.W.14 prepared Ex.P-11 observation mahazar and drew rough sketches, Exs.P-15 and P-16. He arranged P.W.6 Karthikeyan to take

photographs of the scene. He conducted inquest over the dead body in the presence of panchayatdars and prepared Ex.P-17 inquest report. He

issued Ex.P-1 requisition for postmortem through P.W.8 Head constable.

4.8. P.W.7, Assistant Surgeon attached to the Government Hospital, Mayiladuthurai, on receipt of Ex.P-1 requisition, conducted postmortem over

the dead body of the deceased on 16.10.1999 at 12.30 p.m. and found the following injuries:

1. A gaping incised wound extending from the left side of the vault of the skull upto the left half of the occipital bone 23 cm long x 6 cm breadth.

This would have pierced the skull with fracture of vault of skull. The skull bones fractured are left temporal, left parietal and left half of occipital

bone. The fractured pieces of bones are found embedded in the brain matter. Brain is found flowing through the gaping wound.

2. A gaping incised wound extending from the back of left ear cutting across left side of neck, upto middle of left side of neck ending over the medial end of left clavicle 23 cm x 4 cm size. This wound has cut all the deep structures intervened, i.e., muscles, and great vessels of left side of neck.
3. A gaping incised wound over the top of left shoulder cutting across the medial end of left scapula, running over the middle of scapula upto mid axillary line of left axilla on the left side of the back 18 cm x 5 cm size. This wound has cut left scapula in the middle exposing the deep muscles of left side of the back and head of left humerus of shoulder(L).
4. A gaping incised wound over the back of the neck extending from the back of left ear upto middle of the back of the neck on the left side 16 x 5 cm size. This injury has cut the cervical spine with spinal cord at the level of C3, C4. All the deep structures on the left side of the neck is found cut on the side.
5. An incised wound of 3 cm x 1/2 cm muscle depth over the outer aspect of left forearm.
6. A stab injury of 2 cm in length, elliptical in shape seen at the level of 6th intercostal space over mid-axillary line on the left lateral side of the chest. On dissecting, the wound passes deeply inside, traversing in between 6th & 7th rib (L) and injured. Left lung left thoracic cavity contains about 100 ml. Of clotted blood.
7. An incised wound over the left side of chest, 5 cm. below the left clavicle size 3 cm x 2 cm muscle depth.
8. An incised wound of 6 cm x 1 cm muscle depth over (L) gluteal region.
9. An incised wound of 6 cm x 1 cm muscle depth over (L) gluteal region. An incised wound of 3 cm x 1/2 cm muscle depth over (L) gluteal region besides the wound No. 8.
10. An incised wound of 3 cm x 2 cm muscle depth over middle of front of left thigh.
11. An incised wound of 2 cm x 1/2 cm. muscle depth over centre of middle of back.
12. An abrasion of 2 cm x 1 cm over (R) knee.

P.W.7 issued Ex.P-2 postmortem certificate. He was of the opinion that the

deceased would appear to have died of shock and haemorrhage due to the injuries sustained.

4.9. P.W.14 received the dresses worn by the deceased (M.Os.3 to 5) produced by P.W.8 Head constable. On 18.10.1999 he recorded the

voluntary statement of witness Kadher on the basis of which he arrested the accused in other case, viz., Ravisankar and the accused Mariappan,

since deceased and sent them to judicial custody. He took police custody of the accused Natarajan and Suresh who had surrendered in the

Cuddalore Court. He recorded the confession statements of the said accused, but, as per their statements, no weapon was found to be recovered.

He gave requisition to record the statement of witness Kadher and also to conduct test identification parade. P.W.12 Judicial Magistrate recorded

Ex.P-9 statement of witness Kadher u/s 164 Cr.P.C. She also conducted test identification parade to identify the accused in other case, Murali

and the accused Murugan @ Balamurugan. The proceedings of identification parade are Ex.P-10.

4.10. P.W.14 took the said accused Murali and the accused Balamurugan into police custody and recorded their statements as per which he

seized M.O.8 aruval produced by the accused Balamurugan. He took steps to subject the M.Os. to chemical examinations. He examined the

witnesses and recorded their statements. P.W.15 Inspector of Police attempted to trace out Dharmadoss and Mathiazhagan who were examined

as witnesses in the other case, but in vain. He produced the certificates issued by the Village Administrative Officer to the effect that the

whereabouts of those persons was not known. After completing the investigation, P.W.14 laid the final report on 12.1.2000.

4.11. Since the accused Balamurugan denied the charge framed, he was tried in S.C. No. 226 of 2003 on the file of learned Sessions Judge,

Nagapattinam.

5. On behalf of the prosecution, P.Ws.1 to 15 were examined and Exs.P1 to P19, besides Exs.W1 and W2 and material objects M.Os.1 to 8

were marked. Though P.W.4 was examined to for recovery of material objects, he turned hostile.

6. When the accused was questioned u/s 313 Cr.P.C. in respect of the incriminating circumstances found against him, he denied the same. The

accused neither examined any witness, nor marked any document on his side.

7. On consideration of the oral and documentary evidence available on record, the learned Sessions Judge convicted the accused Balamurugan u/s

302 IPC and sentenced him to undergo imprisonment for life with a fine of Rs. 2,000/- and default sentence. Aggrieved by the above conviction

and sentence, the accused Balamurugan has preferred this appeal.

8. The point for consideration in the appeal is whether the prosecution has brought home the guilt of the accused beyond all reasonable doubts.

9. The main plank of argument of Mr. M. Venkataraman, learned senior counsel appearing for the accused Balamurugan is that in respect of the

occurrence that took place in the year 1998, the accused Balamurugan gave complaint against Mathiazhagan and Girishankar, as spoken to by

P.W.9 Sub Inspector of Police and had the complainant Mathiazhagan witnessed the occurrence, he would have mentioned the name of the

accused Balamurugan in the first information report itself, but the accused Balamurugan was implicated only on 5.11.1999. His further submission

is that the overt acts attributed to the accused Balamurugan are not found mentioned in the first information report. He also pointed out the

discrepancies in the evidence of P.Ws.1 and 2.

10. On the other hand, the learned Additional Public Prosecutor submits that the presence of all witnesses, who have spoken to about the

involvement of accused Balamurugan, is mentioned in the first information report and in the first information report it is stated that besides the

accused Natarajan and Suresh, 5 or 6 persons came armed with weapons and attacked the deceased and in the identification parade the accused

Balamurugan was identified and hence, the trial Court has correctly convicted and sentenced the accused and there is no need to interfere with the

judgment of the trial court.

11. We have given our careful consideration to the submissions made by the learned Counsel on either side and also leafed through the records.

13. In the light of above arguments, though we need not delve into the matter, yet, we feel it appropriate to advert to the factual aspects which are

considered to be necessary for the disposal of the appeal.

14. As already observed, the accused Balamurugan remained absconded, the case against him was split up and numbered as S.C. 226 of 2003,

against the judgment of conviction of which the present appeal has been preferred. The other accused were tried in S.C.293 of 2002 which ended in conviction against which separate appeals have been filed.

15.1. Undisputedly, the deceased was a local political person, affiliated to a particular political party. He was the Chairman of Land Development Bank and the President of Rikshaw Pullers' Association. The motive for the occurrence is said to be the earlier incident in which one Duraikkannu was murdered. In that case, the deceased in the present case was the accused and that case ended in acquittal. That incident took place about 15 years prior to the date of present occurrence.

15.2. Further, it is the evidence of P.W.3, wife of the deceased that her husband used to inform her that since the earlier murder case ended in acquittal, he expected problems from the accused Natarajan as he was close to Duraikkannu who was the deceased in the earlier case in which the deceased Ramasamy Thevar was the accused.

15.3. P.W.9, then Sub Inspector of Police, Mayiladuthurai has been examined to speak about the scuffling between the accused party and the deceased party. P.W.9 in his evidence has stated that the accused Balamurugan gave a complaint on 21.4.1998 against one Girisankar on the basis of which a case in crime No. 444 of 1998 under Sections 147, 148, 341, 323, 324, 459 and 307 IPC was registered. The said Girisankar (subsequently died) was the brother-in-law of Ramasamy Thevar and the brother of Mathiazhagan (also subsequently died), who is the complainant in this case.

15.4. Though it is elicited in the cross examination of the witnesses that the deceased Ramasamy Thevar was a rowdy and history-sheeter and the accused in this case was not a witness in the earlier murder case, the evidence of above witnesses would go to show that there were quarrels between the accused party and relatives of the deceased Ramasamy Thevar and because of the acquittal in the earlier murder case, Ramasamy Thevar apprehended some problems at the hands of accused party.

16. The deceased Ramasamy Thevar was done to death at the entrance of temple at Ananthamangalam. P.W.7, the doctor who conducted postmortem found as many as 12 injuries on the body of the deceased and most of them are cut injuries. P.W.15 was of the opinion that the

deceased would appear to have died of shock and haemorrhage due to the injuries caused. From the medical evidence it is clear that it is nothing

but a homicidal violence. The injuries found on the body of the deceased as evident from P.W.15 as well as Ex.P-6, postmortem certificate,

unmistakably go to show that the death was by homicidal violence.

17.1. To prove the guilt of the accused Balamurugan, the prosecution case rests on P.Ws.1 and 2. Though in the other case (S.C. No. 293 of

2002) one Mahalingam, the driver of Ramasamy Thevar and Dharmadoss who drove the car at the time of occurrence were examined as

witnesses, now the prosecution pleaded that it could not trace out those persons and for that, P.W.15 Inspector of Police was examined and

certificates issued by the revenue officials were filed. P.Ws.1 and 2 have spoken to the occurrence in a consistent manner, but, as rightly pointed

out by the learned senior counsel for the accused Balamurugan, a close scrutiny of their evidence would go to show that it is not safe to convict the

accused Balamurugan.

17.2. P.Ws.1 and 2 in their chief examination have spoken about the overt acts attributed to the accused Balamurugan. Even in his cross, P.W.1

has stated that he identified the accused Balamurugan in the identification parade held on 5.11.1999. But, P.W.1, in his cross, has claimed that

when he was examined by the investigating officer on 16.10.1999, he informed him that at the time of occurrence, the accused Natarajan and

Suresh along with 5 or 6 persons came armed with aruval and knife and they attacked the deceased Ramasamy Thevar. He also claimed that he

informed the investigating officer that the accused Balamurugan attacked the deceased with aruval on his neck and head, whereas the investigating

officer P.W.14 in his cross has admitted that during his examination on 16.10.1999 P.W.1 did not state that the accused Balamurugan and others

came armed with aruval and knife and the accused Balamurugan cut the deceased Ramasamy Thevar on his neck, head and other parts of body

with aruval. As already observed, P.W.1 identified the accused Balamurugan in the identification parade on 5.11.1999, but the prosecution has not

proved that the investigating officer examined P.W.1 and recorded his statement thereafter. P.W.1 in his cross has stated that the accused

Balamurugan is his relative and the accused Balamurugan is residing near his

residence for the past 13 years and he also attended the funeral of his father. The statement of P.W.1 in his cross that he knew the accused Balamurugan for the past 13 years and both are relatives raises a doubt as to why P.W.1 has not mentioned the name of accused Balamurugan when he was examined by the investigating officer on 16.10.1999 in spite of his knowledge as to the identity of the accused Balamurugan. Therefore, the implication of accused Balamurugan in the crime by the prosecution is doubtful.

17.3. Similarly, even though P.W.2 in his cross has stated that when he was examined by the investigating officer on 16.10.1999 he informed him that the accused Balamurugan along with other accused armed with weapons, attacked the deceased Ramasamy Thevar, the investigating officer

P.W.14 in his cross denied that during his examination on 16.10.1999 P.W.2 informed him (P.W.14) that the accused Balamurugan also came

along with other accused and cut the deceased. However, it is the evidence of P.W.14 investigating officer that after the identification parade was

over, when he was examined P.W.2 on 5.11.1999, he informed that the accused Balamurugan also attacked the deceased. The evidence of

P.W.2 is that the accused Balamurugan is his relative and he knew him for the past 10 years and he used to call him by name only. If that be so,

P.W.2 should have referred the name of the accused Balamurugan to P.W.14 investigating officer when he examined him (P.W.2) on 16.10.1999.

We are unable to believe the explanation offered by P.W.2 for not referring to the name of accused Balamurugan that he was nervous, because it

is crystal clear from his evidence that he knew the accused Balamurugan for the past 10 years. Had the accused Balamurugan been present among

the accused party at the scene, P.W.2 would have informed the name of accused Balamurugan to the investigating officer on 16.10.1999 itself.

Even though he identified the accused Balamurugan during identification parade and spoke about his overt acts, the non-mentioning of the accused

Balamurugan by name when he was examined by the investigating officer on 16.10.1999 raises a doubt over the evidence of P.W.2.

17.4. The other circumstance which will go in favour of the accused Balamurugan is the complaint Ex.P-13 given by Mathiazhagan wherein it is

stated that the accused Natarajan and Suresh along with 5 or 6 persons came

and attacked the deceased. It is evident from P.W.9 Sub Inspector of Police that the accused Balamurugan lodged a complaint against the said Mathiazhagan and Girisankar on 21.4.1998 and the same was registered in crime No. 444 of 1998 under Sections 147, 148, 341, 323, 324, 459 and 307 IPC. That happened one year prior to the date of occurrence in this case. P.W.3 wife of the deceased also stated in her cross that it is true that Mathiazhagan beat the accused Balamurugan. If that be so, as rightly pointed out by the learned senior counsel for the accused Balamurugan, the complainant Mathiazhagan would have referred the name of accused Balamurugan in the complaint, if he had been actually present at the scene of occurrence and involved in the crime.

17.5. Therefore, there are glaring contradictions in the evidence of prosecution witnesses as to the very presence of accused Balamurugan at the scene of occurrence as well as his participation in the crime which leads to a major as well as serious doubt that the implication of the accused Balamurugan in the heinous crime is false.

18. It is no doubt true that it is a heinous crime and the deceased was done to death in a barbarous manner. However, the evidence available on record is not sufficient to base a conviction on the accused Balamurugan and in view of the above circumstances as pointed out by the learned senior counsel for the appellant/accused, it is not safe to convict the accused Balamurugan for the murder of the deceased. The trial Court, without taking into account the above circumstances, wrongly arrived at the conclusion that the accused Balamurugan was present in the scene and he attacked the deceased as claimed by the prosecution witnesses. Probably, the trial Court has only taken into consideration the evidence of P.Ws. regarding overt acts attributed to the accused Balamurugan to base its conviction which is not correct in view of our above finding.

Accordingly, the conviction and sentence of the accused Balamurugan imposed by the trial Court are set aside and the appeal is allowed. The accused Balamurugan is set at free unless he is required in any other case or cause. The fine amount, if any paid, shall be refunded to the accused Balamurugan.