

(2003) 07 MAD CK 0016
In the Madras High Court
Case No : Criminal A. No. 1182 of 2000

P. Vijayakumar and R. Kunkun

APPELLANT

Vs

State, by Inspector of Police

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)

Citation : (2003) 07 MAD CK 0016

Hon'ble Judges : S. Ashok Kumar, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : S. Kalyanaraman, for the Appellant; E. Raja, Addl.P.P., for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellants/A-1 and A-2 were convicted for the offences under Sections 302 read with 109 and 302 IPC

respectively. Challenging the same, this appeal has been filed.

2. The facts in brief are as follows:-

(a) Vijayakumar (A-1) was working as Maistry in building construction. Kun Kun (A-2) and the deceased Nandudoss were working under him as

labourers. A-1 used to collect daily wages of Rs.150/- from the owners and he used to pay only Rs.70/- to every labourer. Due to this, there was

a dispute raised by the deceased. Consequently, there was quarrel between A-1 and the deceased. This had happened one month prior to the

date of occurrence. Since the act of A-1 was exposed, all the other labourers were not co-operating and as such, they were doing less work and

consequently, there was loss caused to the labour contractor.

(b) In view of the above situation, A-1 had grievance against the deceased and planned to kill the deceased with the help of A-2. Therefore, on

26-1-1999, both the accused approached the deceased and told him that the matter could be compromised among themselves and so saying, they

requested him to come with them to witness a matinee show. Accordingly, all the three went to Delight Theatre and after witnessing the matinee

show, they came to a wine shop at Alaandurai. They purchased a bottle of brandy from P.W.4 salesman. After consuming the same, all the three

came by walk through Mundaandurai Bridge. At that time, both the accused pushed the deceased on the floor. A-1 caught hold of the neck of the

deceased and A-2 with M.O.10 knife, inflicted injuries on the body of the deceased, with the result, the deceased died on the spot. Then, they fled

away.

(c) On 27-1-1999 at about 11 a.m., P.W.1 Jeevamohan, the Village Administrative Officer was informed by the Village Assistant that one male

dead body was lying 200 feet away from Mundaandurai Bridge. P.W.1 went to the scene and verified the same. Then, after knowing the identity

of the deceased through Murugan, he went to Karunya Nagar Police Station and gave Ex.P-1 complaint to Head Constable. The case was

registered for the offence u/s 302 IPC. Ex.P-17 is the F.I.R.

(d) On receipt of the message, P.W.10 Inspector of Police went to the scene of occurrence along with P.W.1-V.A.O and P.W.6 Grade-I Police

Constable and prepared Ex.P-3 observation mahazar and Ex.P-18 rough sketch. Then, he recovered M.O.1 blood stained earth and M.O.2

sample earth. He conducted inquest over the body of the deceased between 4.30 p.m. and 7 p.m. Ex.P-19 is the inquest report. Then, the

witnesses including the brothers of the deceased, identified the body of the deceased as that of their brother. They gave statement in Hindi, which

was translated by P.W.6. During the course of inquest, the brothers of the deceased told Police that there was misunderstanding between A-1 and

the deceased with regard to distribution of wages to labourers. Then, P.W.10 Inspector of Police sent the dead body for post-mortem.

(e) On 28-1-1999, P.W.8 Doctor, attached to Coimbatore Government Medical College Hospital, conducted post-mortem and found as many as

32 injuries on the body of the deceased. He gave an opinion in Ex.P-10 post-

mortem certificate that the deceased would appear to have died of shock and hemorrhage due to multiple injuries.

(f) On 28-1-1999, when P.W.1-V.A.O. was in his office, one Subramaniam brought both A-1 and A-2 and produced them before him at about 3

p.m. Both of them gave extra-judicial confession before V.A.O. in Hindi and the same was translated by Subramaniam. Then, P.W.1 took both

the accused and produced them in the police station along with Ex.P-4 report, containing the extra-judicial confession of the accused.

(g) Then, P.W.10 Inspector of Police arrested the accused and interrogated both of them. They gave voluntary confession in Hindi, which was

translated by P.W.6 Police Constable. Ex.P-5 is the confession statement of A-1. Ex.P-6 is the confession statement of A-2. In pursuance of the

said confession statements, P.W.10 recovered M.O.3 money purse, M.O.4 watch, M.O.5-four numbers of Rs.50/- currency, M.O.6 blood

stained shirt, M.O.7 pant, M.O.8-30 numbers of Rs.100/- currency, M.O.9 movie tickets, from A-1 and M.O.10 knife, M.O.11 pant and

M.O.12 shirt, from A-2.

(h) Then, on 29-1-1999, P.W.10 sent the accused to Court for judicial remand. Thereafter, he continued the investigation and filed the charge

sheet against the accused for the offence u/s 302 read with 109 IPC.

3. During the course of trial, on the side of prosecution, P.Ws.1 to 10 were examined, Exs.P-1 to P-20 were filed and M.Os.1 to 18 were marked.

4. The plea of the accused when they were questioned u/s 313 Cr.P.C. is one of total denial.

5. The trial Court, while appreciating the evidence available on record, concluded that the prosecution has established its case beyond reasonable

doubt and convicted A-1 for the offence u/s 302 read with 109 IPC. and A-2 for the offence u/s 302 IPC and sentenced them each to undergo

life imprisonment. Hence, this appeal.

6. Mr. S. Kalyanaraman, learned counsel appearing for the appellants, while assailing the impugned judgment, would contend that the

circumstances available on record would not only suffer from infirmity, but also would not be sufficient to hold the accused guilty of the murder and

as such, they are entitled to be acquitted.

7. Arguing contra, Mr. E. Raja, learned Additional Public Prosecutor, while justifying the reasoning given by the trial Court for convicting the

accused, would point out various portions of the evidence and contend that the chain of circumstances is complete as against the accused and as

such, the conviction and sentence imposed upon the accused are liable to be confirmed.

8. We have considered the rival contentions urged by learned counsel for the parties and also gone through the records.

9. On a careful consideration of the submissions made by learned counsel for the parties and on a perusal of the records, we are of the view that

the prosecution case would bristle with several infirmities. Resultantly, the accused are entitled to be given the ""benefit of doubt"" and as such, they

are liable to be acquitted. Following are our reasons to arrive at such a conclusion.

10. The main circumstances brought on record by the prosecution as against the accused are:

(i) Ex.P-4 extra-judicial confession given by the accused to P.W.1-V.A.O.

(ii) Recovery of the blood stained weapon and clothes from the accused.

11. Apart from these circumstances, the prosecution has attempted to prove the case by examining the shop owner-P.W.3 from whom M.O.10

knife was purchased by A-2 and P.W.4 wine shop salesman, who speaks that on the date of occurrence, all the three came and purchased

brandy. The prosecution has also produced one more witness-P.W.5 tailor, who speaks that he saw both the accused with a knife near the place

of occurrence at or about the time of occurrence. We need not give any importance to the evidence of P.W.3 and P.W.5, since P.W.3's evidence

relating to purchase of knife on the date of occurrence, namely a Government holiday (the Republic Day) is so artificial. Similarly, as pointed out by

the trial Court, P.W.5's evidence also cannot be accepted, in view of the fact that he could not identify M.O.10 knife, while he admitted that

M.O.10 was concealed by A-2 in his hand when he was proceeding on the road, that too in the night hours. Thus, the main circumstances

projected by the prosecution are two, namely the extra-judicial confession and recovery of knife.

12. According to prosecution, P.W.1-V.A.O, on visiting the spot and verifying that the dead body was lying in the place of occurrence, went to police station and gave Ex.P-1 complaint at about 2 p.m. on 27-1-1999 and the same was registered by the Head Constable. Immediately, investigation was taken up by P.W.10 Inspector of Police. The extra-judicial confession was given by the accused to V.A.O. through Subramaniam only on 28-1-1999 at about 3 p.m. Thus, it is evident that the extra-judicial confession was recorded by P.W.1-V.A.O, only after the commencement of investigation, that too, on the basis of the complaint given by him. As laid down by this Court as well as the Supreme Court, the extra-judicial confession given to V.A.O., after the investigation, would not assume much importance.

13. Yet another reason to be given for rejecting the extra-judicial confession is that the same was given by both the accused not directly to V.A.O., but to one Subramaniam in Hindi. Thus, the case of the prosecution is that Subramaniam only brought both the accused to V.A.O., after coming to know that they had committed the offence. Admittedly, the accused did not know Tamil. Similarly, P.W.1-V.A.O also did not know Hindi. As such, the entire translation was done by the said Subramaniam. In those circumstances, Subramaniam can be the proper person to speak about the contents of the extra-judicial confession made by the accused to V.A.O. There is no reason as to why the investigating agency has not chosen to examine the said Subramaniam. It is true that the conviction can be based upon merely on the extra-judicial confession, provided it is reliable and the same is corroborated by other particulars. So, non-examination of the material witness, namely Subramaniam would not permit us to place much reliance on the extra-judicial confession. Further, P.W.1 would admit in the cross-examination that he did not know as to whether the said Subramaniam knew Hindi or not. Had he actually translated in Tamil, P.W.1 would have very well said that he only translated, because he knew Hindi. Under those circumstances, we are unable to accept the extra-judicial confession, the contents of which were not admittedly known to P.W.1.

14. Next evidence is recovery. According to prosecution, both the accused were arrested and produced by P.W.1-V.A.O. on 28-1-1999 in the

police station at about 4 p.m. From them, M.O.10 knife, clothes, etc. were recovered. M.O.10 contained blood and the same was sent for

chemical examination. The Serologist report also reveals that it contained human blood - "B" Group.

15. A disturbing feature we could notice in this case is that though the prosecution projected its case, the involvement of the accused in the crime

came to know only after their giving extra-judicial confession on 28-1-1999. A perusal of Column Nos.5 and 9 in Ex.P-19 inquest report would

show that even during the course of inquest, which was held on 27-1-1999 between 5 p.m. and 7 p.m., it was clearly mentioned that both A-1

and A-2 inflicted injuries on the deceased and caused his death. It is not understandable as to how the investigating agency was able to get the

particulars about the involvement of A-1 or A-2. As a matter of fact, as per the extra-judicial confession, A-1 caught hold of the deceased by his

neck and A-2 inflicted injuries on the body of the deceased. In the inquest report, it is mentioned in Column No.9 that both A-1 and A-2 inflicted

injuries by the same sharp edged weapon.

16. Admittedly, in the course of inquest, the persons examined were all not the eye-witnesses. On the other hand, it is mentioned that Vikas

Kumar, Vinod Kumar, the brothers of the deceased had been examined. As seen from the records, both the brothers have told the police about

the misunderstanding between A-1 and the deceased. As a matter of fact, their statement made to police is that when there was quarrel between

them, they only went to the work-spot and pacified both of them and took the deceased with them. In addition to that, they have stated that on the

date of occurrence, A-1, A-2 and the deceased went together on 26-1-1999 for witnessing the cinema. So, when the evidence relating to the last

seen alive of the deceased in the company of the accused through Vikas Kumar and Vinod Kumar is available, there is no reason as to why those

witnesses have not been examined before the Court. It is also noticed from A-2's confession that it was recorded by P.W.10 Inspector of Police

on being translated by P.W.6 Police Constable on 28-1-1999. But, P.W.10 Inspector of Police put his signature in the said confession as if the

same was recorded on 27-1-1999.

17. So, all these things put together, would create a doubt in our mind that the

arrest and recovery would not have been made at the relevant time

as alleged by the prosecution. Therefore, we are unable to give any importance to this aspect as well.

18. It is also noticed that the post-mortem certificate would show that there are 32 injuries on the body of the deceased. According to prosecution,

M.O.10, the sharp edged knife alone was used. But, it is seen from the post-mortem certificate that out of 32 injuries, 16 injuries are stab injuries,

15 are cut injuries and one injury is a cluster of four abrasions. Therefore, we feel that more than one weapon must have been used.

19. In the light of the above circumstances, the appellants/A-1 and A-2 are entitled to be given the ""benefit of doubt"" and the appeal has to be

allowed. Accordingly, the appeal is allowed, setting aside the conviction and sentence imposed on the appellants/A-1 and A-2 and they are

acquitted of the charges. The appellants are directed to be set at liberty forthwith, unless they are required in connection with any other case.