
(2007) 03 MAD CK 0079

In the Madras High Court

Case No : Criminal Appeal (Md) No. 162 of 2004

Raja, Paramasivam, Arivalagan and Balu @ Balasubramanian APPELLANT
Vs

State by the Inspector of Police RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 34, 506(2)

Citation : (2007) 03 MAD CK 0079

Hon'ble Judges : P.R. Shivakumar, J;M. Chockalingam, J

Bench : Division Bench

Advocate : A.P. Muthupandian, for the Appellant; Daniel Manoharan, APP, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenging the judgment of the learned First Additional District and Sessions Judge, Thanjavur made in Spl.S.C. No. 14 of 2004, the appellants herein, who stood charged under Sections 302 r/w Section 34 and 506(2) IPC, tried and found guilty u/s 302 r/w Section 34 IPC and awarded life imprisonment each and to pay a fine of Rs. 10,000/-, in default to undergo two years RI and were not found guilty u/s 506(2) IPC, have brought forth this appeal before this Court.

2. The brief facts of the prosecution case can be stated thus:

a) P.W.1 Mayilambal is the native of Vadakal. P.W.2 is the son of P.W.1. The deceased Muruganandam was also the another son of P.W.1. P.W.3 and P.W.4 were all the residents of the same street, where P.W.1 and her family were residing. All the accused also belonged to the same place. P.W.1 was the member of the Self Help Group, of which P.W.6 was the President. On the request of A-1, P.W.1 got a sum of Rs. 1000/-, as a loan from the Self Help Group and handed over to him. Despite demands, it was not returned. On 8.9.2003 at about 8.00 a.m., P.W.1 was demanding money from A-1. At that time, the deceased

Muruganandam was also present. The first accused gave some evasive reply. Hence, Muruganandam told A-1 that he would pay back the amount before evening otherwise, he would be seen to it. Thereafter, the deceased left for work.

b) At about 2.00 a.m. on 9.9.2003, when Muruganandam was sleeping in front of the house of P.W.5 and P.Ws.1 and 2 were also sleeping in front of their house, all the four accused armed with aruval came to the place of occurrence and attacked Muruganandam indiscriminately. On hearing the distressing cry, P.Ws.1 and 2 woke up and saw the accused persons attacking Muruganandam. They tried to stop them, but they were also intimidated by the accused. All the accused fled away from the place of occurrence. P.Ws.1 and 2 went nearby the said Muruganandan and found him dead.

c) P.W.1, immediately proceeded to Kallaperambur Police Station, where P.W.13, the Head Constable was on duty at that time. P.W.1 gave Ex.P.1, the report to P.W.13, on the strength of which, a case came to be registered in Crime No. 111/2003 under Sections 302 and 506(2) IPC. Ex.P.10, the FIR was despatched to the Court.

d) P.W.16, the Inspector of Police, on receipt of the copy of the FIR, took up the investigation, proceeded to the spot and made an inspection in the presence of the witnesses. He prepared Ex.P.2, the observation mahazar and Ex.P.11, the rough sketch. The dead body of the deceased and the place of occurrence were photographed through P.W.10, the photographer. M.O.5 is the photo and M.O.6 (Series) are the negatives. P.W.16 also recovered sample earth and bloodstained earth and other material objects from the place of occurrence under a cover of mahazar. Following the same, he conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared Ex.P.12, the inquest report. Then, the dead body of the deceased was sent for the purpose of autopsy to the Thanjavur Medical College Hospital along with a requisition.

e) P.W.9, the Doctor, attached to the Thanjavur Medical College Hospital, on receipt of the requisition, has conducted autopsy on the dead body of the deceased. She has issued Ex.P.9, the post-mortem certificate, wherein she has opined that the deceased would appear to have died of shock and haemorrhage due to multiple cut injuries sustained.

f) Pending investigation, P.W.16 arrested all the accused on 11.9.2003. A-1 voluntarily gave confessional statement, which was recorded in the presence of the witnesses, the admissible part of which was marked as Ex.P.13. Pursuant to the same, A-1 produced four aruvals, which were marked as M.O.13 (Series). All the accused were sent for judicial remand. All the M.Os recovered from the place of occurrence, from the dead body of the deceased and also the M.O.13 (series), aruvals recovered from the accused pursuant to the confessional statement were subjected to chemical analysis pursuant to the requisition forwarded by the Investigating Officer through the Court. Ex.P.16 (series) are the Serologist's

report and Chemical Analyst's report. 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, the prosecution has examined 16 witnesses and relied on 16 exhibits and 13 M.Os. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.P.C. procedurally as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. No defence witness was examined. The trial court, after hearing the arguments advanced on either side and scrutinising the materials available, has found the accused/appellants guilty u/s 302 r/w Section 34 IPC and awarded punishment as referred to above and has acquitted them for the offence u/s 506(2) IPC. Hence, this appeal at the instance of the appellants before this Court.

4. Advancing his arguments on behalf of the appellants, the learned Counsel would submit that in the instant case, the prosecution relied on the evidence of P.Ws.1 and 2; that the occurrence has taken place at about 2.00 a.m. on 9.9.2003; that according to the prosecution, at that time, P.Ws.1 and 2 were sleeping in front of their house and the deceased was sleeping in front of the house of P.W.5; that it is highly doubtful whether P.Ws.1 and 2 could have seen the occurrence at all; that according to the Investigating Officer, who recorded the statements of P.Ws.1 and 2, at the time when P.W.2 was interrogated and his statement was recorded u/s 161 Cr.P.C, he has not stated that both of them were sleeping in front of their house and that they could not have heard the noise or distressing cry and they could not also have seen the occurrence at all; P.Ws.1 and 2 are close relatives, namely the mother and elder brother of the deceased; and that if the test of careful scrutiny is applied, their evidence must be rejected.

5. Added further the learned Counsel that in the instant case, the occurrence has taken place at 2.00 a.m., but the case came to be registered by the respondent police at about 5.00 a.m.; that there was a delay of three hours; that according to the prosecution evidence, the copy of the FIR was handed over to the Constable at 6.30 a.m., but it has reached the court only at 1.30 p.m. and thus, there was a delay of 6 or 7 hours; that the Court is also situated within a distance of 10 Kms.; that if to be so, the delay should have been explained, but the delay has not been explained at all; that apart from that, in the instant case, the prosecution has marched the witnesses in order to substantiate the alleged confessional statement and the recovery of M.O.13 (series); that both the witnesses, namely P.Ws.7 and 8, who were examined as to the confessional statement and recovery of weapon of crimes, have turned hostile and hence, that part of the evidence was to be rejected and thus, what was available for the prosecution was only the evidence of P.Ws.1 and 2; that they could not have seen the occurrence at all and thus, the trial court should have rejected the case of prosecution outright; that even in the recovery mahazar, namely Ex.P.14, the date has been corrected and mentioned as 11.09.2003; that this would also cast

a doubt on the prosecution case and hence, the accused/appellants are entitled for acquittal in the hands of this Court.

6. Heard the learned Additional Public Prosecutor on the above contentions.

7. The Court has paid its anxious consideration on the submissions made.

8. It is not the fact in controversy that one Muruganandam, the son of P.W.1 was done to death in a occurrence that took place on 9.9.2003 at about 2.00 a.m. Following the inquest made by the Investigating Officer, the dead body of the deceased was subjected to post-mortem by P.W.9, the Doctor. She has issued Ex.P.9, the post-mortem certificate, wherein she has opined that the deceased would appear to have died of shock and haemorrhage due to the multiple cut injuries sustained. Apart from that, the deceased died out of homicidal violence was never questioned by the appellants/accused at any stage of proceedings. Hence, it has got to be recorded so.

9. In order to substantiate the charges levelled against the accused that all the four accused armed with deadly weapons came to the spot and attacked the deceased indiscriminately and caused his death, the prosecution relied on the evidence of P.Ws.1 and 2. P.W.1 is the mother and P.W.2 is the elder brother of the deceased. The Court is mindful of the caution made by the law that where the eyewitnesses are closely related to the deceased, on that ground, their evidence cannot be discarded, but it must be applied the test of careful scrutiny. After applying the test, their evidence has inspired the confidence of the court. In the instant case, both the witnesses have given a categorical evidence. According to prosecution, the motive for the case was P.W.1 was the member of Self Help Group, for which P.W.6 was the President. P.W.1 has got a sum of Rs. 1000/- as a loan from the Self Help Group and handed over the same to A-1, on his request. Many a demand was made, but A-1 did not repay the same. On 8.9.2003, P.W.1 demanded the same and the deceased was also present at that time. As usual, the first accused gave evasive answer. At that time, the deceased informed A-1 that he must pay back the amount before evening otherwise, direct consequences would follow. Thus, the facts that the borrowal of money from the Self Help Group by P.W.1 and handed over the same to A-1 and A-1 did not make payment, despite demand and P.W.1 demanded the same on 8.9.2003 and the deceased was also present at that time, have been clearly spoken by P.W.1. This part of the evidence would clearly speak about the motive of the case. P.Ws.1 and 2 have given evidence in one voice. According to both of them, they were sleeping outside of their house. P.W.1 has clearly pointed out that the deceased was actually sleeping outside the house of P.W.5. Both P.Ws.1 and 2 on hearing the distressing cry, woke up and saw the four accused attacking the deceased with aruvals indiscriminately and when P.Ws.1 and 2 raised alarm, they were intimidated by the accused and all the accused ran away from the place of occurrence. Despite cross examination, the evidence of both the witnesses remained unshaken.

10. The contention of the learned Counsel for the appellants is that P.Ws.1 and 2 could not have seen the occurrence at all for the reason that at the time of interrogation by the Investigating Officer, P.W.2 has not stated that they were sleeping outside the house. Merely because of non mentioning of the fact that they were sleeping outside of the house, the evidence of P.Ws.1 and 2 as eyewitnesses cannot be seen with doubt and hence, the said contention has got to be discountenanced.

11. The other contention of the learned Counsel for the appellants is that there was a delay in registration of the case. Immediately, after the occurrence P.W.1 proceeded to the police station and gave Ex.P.1, the complaint and the case came to be registered at 5.00 a.m. The distance between the scene of occurrence and the police station is 10 Kms. The occurrence has taken place in a village. According to P.W.1, P.Ws.1 and 2 went to the police station by bicycle and gave the complaint and thus, the FIR has come into existence. The fact that as to how P.Ws.1 and 2 happened to see the occurrence has been clearly narrated in Ex.P.1. Thus, the facts of the case were actually deposed by P.Ws.1 and 2.

12. In the instant case, according to the learned Counsel for the appellants, there was also a delay in the FIR reaching the Court. According to the prosecution, after registration of the case, the FIR was handed over to the constable at 6.30 a.m. and it has reached the Court at 1.30 p.m. An explanation was tendered by the prosecution through the particular constable that when he went over to the Judicial Magistrate Court, the concerned Judicial Magistrate was on leave and therefore, he took the same and handed over it to the Judicial Magistrate, who was in additional charge of the said court. It is pertinent to point out that it was also a working day and the Magistrate concerned has received the same by 1.30 p.m. Though some delay is noticed, the court is of the considered opinion that, the delay has caused in the natural course of events and that no deliberation or anything could be added.

13. In the instant case, the prosecution has brought forth the evidence of P.Ws.7 and 8 for the alleged confessional statement and also for the recovery of weapons of crime, namely M.O.13(series), but both the witnesses have turned hostile. Therefore, their evidence cannot be accepted. At the same time, it is a settled proposition of law that in a given case like this, merely because of rejection of the evidence in respect of confessional statement and recovery of weapons of crime, the prosecution case need not be rejected and if other evidence is available, the conviction can be sustained. In the instant case, the ocular testimony was fully corroborated by the medical evidence through post-mortem Doctor and the post-mortem certificate. Under these circumstances, the lower court has marshalled the evidence properly and found the accused/appellants guilty. All or any one of the contentions put forth by the learned Counsel for the appellants do not merit acceptance by the Court.

14. In the instant case, all the four accused armed with deadly weapons came to the place of occurrence and attacked the deceased, who was unarmed, when he

was sleeping and caused his death mercilessly and hence, the act of the accused cannot, but be termed as murder as contemplated under the provisions of murder and they have also shared the common intention. The lower court was perfectly correct in finding them guilty u/s 302 r/w Section 34 IPC. Hence, the conviction and sentence imposed by the lower court on the appellants do not require any interference, both factually and legally.

15. Accordingly, the criminal appeal fails and the same is dismissed.