

(2008) 02 MAD CK 0162

In the Madras High Court

Case No : Criminal Appeal No. 854 of 2005

State by Inspector of Police

APPELLANT

Vs

Sakilan and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 324

Citation : (2008) 02 MAD CK 0162

Hon'ble Judges : V. Periya Karupiah, J;D. Murugesan, J

Bench : Division Bench

Advocate : V.R. Balasubramanian, app, for the Appellant; A. Natarajan for N. Manoharan, for the Respondent

Final Decision : Dismissed

Judgement

V. Periya Karupiah, J.—This appeal is directed against the Judgment of acquittal of the accused A1 to A6 preferred by the State. Accused 1 to 6 were charged before the trial Court for offences under Sections 341, 148 and 302 I.P.C. and the trial Court after full-fledged trial, acquitted all the six accused.

2. The case of the prosecution as culled out from the evidence is as follows:

a) The deceased Sasikumar was having some dispute with the mother of accused 1 and 2, one Kolammal. On 24.11.98 at 8.00 p.m. while the deceased was demanding for tiffin the said Kolammal did not accede to his demand without payment of money and on that basis dispute has erupted; that the sons of Kolammal viz., A1 and A2 alongwith A3 to A6 had decided to cause murder Sasikumar on the enmity erupted, on the same day and accordingly they said to have taken Koduval in their hands and formed themselves into an unlawful assembly and thereafter approached the deceased when he was about to go to Albert Theatre at the Junction of Laser Church Street and Kovilur Amman Temple Street and caused injuries all over the body of the deceased with weapons and

due to the said injuries caused on the body of Sasikumar, he succumbed to injuries when he was taken to the Government General Hospital for treatment by P.Ws.1 to 3.

b) P.W.1 is the brother of the deceased, who went along with P.W.3 wife of the deceased, to the Chindadripet Police Station and there, P.W.1 lodged a complaint which was received by P.W.11, the Head Constable, who registered the case in Cr. No. 2754 of 1998 u/s 147, 148, 341, 324 and 307 I.P.C. at 1.00 a.m. 25.11.98. The complaint is marked as Ex.P.1 and the Printed F.I.R. is Ex.P.26. P.W.13, the Inspector of Police, Chindadripet Police Station, on receipt of the F.I.R. took up the investigation. He went to the scene of occurrence at about 2.00 a.m. and prepared Observation Mahazar, Ex.P.6 and Rough Sketch Ex.P.20 and collected the blood stained cement slab, and sample slab (M.Os.7 and 8) from the occurrence place in the presence of the witnesses. He went to the Government Hospital at about 4.00 a.m. on 25.11.1998 where the deceased was admitted in an unconscious condition. He examined witnesses Rajkumar and Muthulakshmi and recorded their statements and recovered bloodstained Jeans, full shirt and inner wear (M.O.9,10 and 4) from them under Mahazar Ex.P.2. When he received the intimation from the Government Hospital that the injured sasikumar died at 6.00 a.m. on 25.11.1998, he rushed to the Government Hospital at 7.30 a.m. and examined Doctor Manjula and obtained death report from her. Since the injured Sasikumar died P.W.13 altered the charges into one u/s 302 I.P.C. and sent express report to the Court. The express report is Ex.P.22. P.W.13, the investigating officer conducted inquest on the dead body of the deceased in the presence of the Panchayatdars and prepared Inquest Report Ex.P.23. On 26.11.1998 he sent a requisition to the Court to forward the bloodstain articles to the Forensic Science Laboratory for Chemical Examination. His requisition is Ex.P.24 and the communication sent to Forensic Department from the Court is Ex.P.25. On 26.11.98 the accused who were arrested by the Sub-Inspector of Police, were examined by P.W.23-the Inspector of Police at 10.00 p.m. The confession statement voluntarily given by the accused Venkatesh, Sakilan, Tamizh, Dilipkumar, Sasikumar and Arasu were recorded in the presence of the witnesses Thiagu and Selvam and as per the admissible portion of their confession statements the weapons which were used for committing the offence were recovered. He also recovered the clothes worn by the accused and sent all the properties to the Court through Form-95. On 29.11.1998 he examined Dr. Kamala Anandram, who conducted post mortem on the dead body of the deceased and obtained Post Mortem Report Ex.P.8.

c) The Post Mortem Doctor has found the following injuries on the dead body:

1. Surgical sutured wound over left front parietal area measuring 7 cms. with 6 sutures, 5 cms from left eyebrow.
- 2.Surgical sutured wound over left side of face starting from above the left eye brow to right lower lip lateral end measuring 15 cms with 23 silk sutures

3. Multiple abrasions over occipital region 2x2cm, 3x2cm, 5x3cm, 2x2cms.
4. Abrasion over right forehead 2x2cm
5. Laceration over medial end of left cheek 2x2cm x bone deep
6. Laceration over right ear to the right parietal area 12x3xcmxbone deep.
7. Laceration on the right index finger with peeling of skin 4x3cm x bone deep
8. Amputation of right hand fingers- little, middle and ring fingers with contusion
9. Incised wound over left 1st intercostal space to the middle of left nipple 11x1cm x skin deep
10. Incised wound over mid scapular line from 2nd to 4th intercostal space 4 x 2 cm x skindeep
11. Incised wound over the medial end of left nipple to 6th inter costal space on left side
12. incised wound 15cms in length, 2 cms from the 6th intercostal space
13. Incised wound on 8th intercostal space extending downwards to the right umbilicus 12 cms in length.
14. Incised wound over 10th intercostal space 2 cms above the right umbilicus on left side.
15. Incised wound on right 6th intercostal space to left 7th intercostal space running downwards 10cms in length bone deep.
16. Cut injury bone deep over dorsum of left hand extending to the lateral to little finger 6cms in length running downwards with tapering end
17. Two cut injuries over the right lateral arm to lower third of right arm 4 x 3 cm x skin deep
18. Cut injury 2 cms below the previous injury 3x1cm x muscle deep
19. Cut injury over right elbow joint anterior aspect 3 x 2 cms x skin deep
20. Cut injury extending from right to the middle of ankle joint with fracture of lower end of right tibia and fibula
21. Cut injury muscle deep lower third of medial end of right tibia 3 x 2cms.
22. Cut injury above the medial end of left ankle 10 x5cm x bone deep with extravasations of blood vessels.
23. Cut injury over left front parietal area (superficial) 6cms in length

On reflection of Scalp: sub Scalp haematoma over the entire surface of the brain.

Heart : All Chambers contained fluid blood. Lungs : Pale Stomach : Contained

300 ml of black colour Fluid. No specific smell Mucosa-congested. Brain : Pale

All other internal organs were found pale

She also opined that the deceased would appear to have died of shock and haemorrhage due to multiple cut injuries. Upon completion of investigation, P.W.13, the investigating Officer laid Charge Sheet before the XIV Metropolitan Magistrate, Egmore, Chennai for offences under Sections 341, 148 and 302 I.P.C. against all the above six accused.

3. The Trial Court had examined 13 witnesses, marked 25 exhibits and produced 28 M.Os and 3 exhibits were filed on the defence side. When the accused were questioned u/s 313 of the Criminal Procedure Code, as to the incriminating materials appearing against them, they totally denied them as false. None were examined on the accused side. Having come to the conclusion of acquitting all the six accused, the learned trial Court Judge had released all the accused from the charges levelled against them.

4. Mr. V.R. Balasubramanian, learned Additional Public Prosecutor, represented the State, which has filed the present appeal. Mr. A. Natarajan learned Senior Counsel appears for Mr. N.Manoharan learned Counsel for the respondents/A-1 to A-6.

5. Learned Additional Public Prosecutor would submit in his argument that the prosecution had examined P.W.1 to P.W.3 as eye witnesses and had also produced the other circumstantial evidence coupled with medical evidence in support of its case and had proved the guilt of all the accused. But the learned Sessions Judge did not appreciate the evidence adduced on the side of the prosecution and had acquitted all the accused. He would further submit in his argument that the witnesses P.Ws.1 to 3 have been examined as eye witnesses who are happened to be the relevant witnesses, but the trial Court had not placed much reliance on their evidence since they are relative witnesses. The witnesses P.W.1 to P.W.3 were present at the time of occurrence and therefore they have to speak about the occurrence. Hence, they cannot be held to be interested witnesses merely because they are closely related. Moreover he would submit in his argument that P.W.1. Who is the younger brother of the deceased Sasikumar, had identified all the accused and the said evidence was corroborated by the evidence of P.W.2. However, error has been committed by the trial Court in assuming and presuming certain things to acquit the accused. He would also submit in his arguments that the scientific evidence produced on the examination of the bloodstains contained in the weapons used by the accused 1 to 6, which were also recovered promptly from the accused on their confessions leading to the recovery of those weapons u/s 27 of the Evidence Act, immediately after their arrest made by the police were not considered by the Trial Court in arriving at a conclusion to convict the accused 1 to 6. He would further submit in his argument that the bloodstains found in the clothes of the accused 1 to 6 which were seized in the presence of the witnesses contains the same blood group of

the deceased person viz., "B" group and the said fact was not taken note of by the Trial Court in order to corroborate the evidence of P.Ws.1 to 3. The Additional Public Prosecutor would further submit in his argument that the evidence of P.W.1 to P.W.3 are cogent, they were supported by the circumstantial evidence like recovery and the scientific report and therefore trial court ought to have convicted the accused 1 to 6. On these contentions, the Additional Public Prosecutor pleaded that the acquittal order passed by the Trial Court may be set aside and the accused 1 to 6 may be convicted for the charges framed against them.

6. Mr. A. Natarajan Learned Senior Counsel for the respondents/A-1 to A-6 would submit in his argument that the motive suggested by the prosecution in this case was the denial of tiffin by the mother of the accused one Kolammal on demand of the deceased on the fateful day that is on 24.11.98 at about 6.00 p.m. and the said denial of tiffin to the deceased Sasikumar had erupted into a dispute and therefore the accused 1 to 6 were said to have developed a grudge over the deceased and planned to kill him accordingly they said to have executed their vengeance by 11.30 p.m. on the same day. He would further continue his argument that the said occurrence in which the said Sasikumar was murdered was spoken to by P.Ws.1 to 3 who are none other than the brother, sister-in-law and the wife of the deceased and no other independent witnesses were examined in support or in corroboration of the evidence of P.Ws.1 to 3. He would further submit in his argument that the alleged place of occurrence is said to be the junction of the Laser Church Street and the Kovilur Amman Street and the said place have been marked in the rough sketch Ex.P.20 and the Observation Mahazar Ex.P.6. However, the evidence of P.Ws.1 to 3 would go a long way to show that the place of occurrence was only at Kovilur Amman Street, which is away from the scene of occurrence and therefore, there is a material contradiction in the place of occurrence itself and therefore, the alleged occurrence should have been concocted for the purpose of foisting the case against A-1 to A-6. He would further submit in his argument that the recovery of the clothes said to have contained the bloodstains of A1 to A6 were said to have been seized only at the Police Station under Form 95 and the said clothes were said to have been sent to Chemical Examination as well as serological examination and those results arising out of chemical examination and the serology examination may not correctly depict the truth but it has been concocted by the police for the purpose of implicating the accused through falsifying the evidence. He would further submit that the recovery of the weapons on the basis of the confession made by the accused u/s 27 of the Evidence Act also may not be genuine since the stock witness viz., the cousin brother of the deceased alone was taken as a witness. He was examined as P.W.8 and his evidence cannot be relied upon and accordingly the trial court also did not rely on the evidence of P.W.8. He would further submit in his argument that without examining any independent witness, it is not possible to implicate the accused 1 to 6 against whom P.Ws.1 to 3 have not spoken promptly involving of

the accused in the crime. He would further submit in his argument that the evidence of P.Ws.1 to 3 would show the deceased was having number of enemies and he was detained under Goondas Act thrice and therefore, the alleged murder of the deceased Sasikumar would have been committed by some other person and the police have falsely implicated A1 to A6 in the case. Therefore, he would further submit that the benefit of doubt given by the trial Court is perfectly in order and the Judgment of acquittal passed by the Trial Court is based on sound reasons and therefore, the appeal may not be allowed, but deserves dismissal.

7. We have given our anxious thoughts to the arguments advanced on either side.

8. The evidence adduced on the side of the prosecution was spoken by P.Ws.1 to 3. P.W.1 is the younger brother of the deceased Sasikumar, P.W.2 is the Sister-in-law of the deceased and P.W.3 is the wife of the deceased. Except these three witnesses no other independent eye witness was examined on the side of the prosecution for the purpose of speaking about the actual occurrence alleged to have taken place on that day. P.Ws.1 to 3 have also spoken about the enmity for the cause of the occurrence being the denial of tiffin by Kolammal to the deceased on the fateful day evening. It is also the evidence of P.Ws.1 to 3 that they could not prevent the occurrence since all the accused have also threatened to cause injuries to them and they have fled away from the scene of the occurrence along with the weapons after committing the crime. It is also understood that P.Ws.1 to 3 had tried to hire an Auto Rickshaw to take the injured Sasikumar to the hospital. However, they got only a fish cart and with the means of the fish cart they took the injured to the hospital and the said Sasikumar was found dead in the hospital. Immediately, the complaint was received by the police by recording the statement from P.W.2. Whether the evidence of P.Ws.1 to 3 would be sufficient for the purpose of convicting accused 1 to 6, despite they are relative witnesses is the question to be answered.

9. It is an admitted fact that there is no other witness examined by the prosecution to speak about the occurrence except these three persons. All these three persons have spoken to the effect that A2 to A6 with the weapons in their hands had attacked the deceased on the fateful day at about 9.30 p.m. when they were searching for in the Laser Church Road, as the deceased had not returned back to the house after he simply stated to them that he would go upto Albert Theater and return. However, the evidence of P.Ws.1 to 3 did not implicate A1 causing any overt act against the deceased Sasikumar. Whether such evidence can be relied upon with the alleged occurrence in support of the circumstantial evidence produced by the prosecution is a question to be answered.

10. The accused were arrested on 26.11.1998 and were kept in the Police Station and the witness Selvam and P.W.8 Thiagu were called by the police for the purpose of recording the confession statement and it was the evidence of P.W.8 that the confession statement of A1 to A6 were recorded by the police and at that time the police had given alternative clothes to all the accused 1 to 6 and

had seized the clothes worn by the accused 1 to 6 which contained bloodstains. Apart from that he would also speak to the effect that the weapons were recovered on the basis of their confession from the place where they have already secreted those weapons. Those weapons have been marked as M.Os.1 to 6. The relevant Mahazar is Ex.P.18. The admitted portions of the alleged confession statements given by A1 to A6 were marked as Ex.P.11, Ex.P.13 to Ex.P.17. We shall now consider whether those confessions given by A1 to A6 to the police in the presence of P.W.8 and other witness and the recovery of weapons made on that basis and the recovery of the clothes at the police station without any confession could be relied upon. There is no doubt that the clothes of the accused worn by A1 to A6 were recovered from them at the instance of the police in the police station itself through Form 95. It is not the case of the prosecution that the accused have agreed to give bloodstained clothes worn by them on the basis of their own confession. P.W.8 was also a witness for that event and thereafter he was taken as witness for confession given by all the accused 1 to 6 and for the recovery of the weapons from the accused. The said witness is closely related to the deceased, it was admitted by him that the mother of P.W.8 and the mother of the deceased are sisters. Therefore, the evidence of P.W.8 cannot also be considered as an independent evidence which can be taken as support and for corroboration of the evidence of P.Ws. 1 to 3.

11. In these circumstances, the argument advanced by the learned Additional Public Prosecutor that the circumstantial evidence would also support the case of the prosecution as spoken to by P.W.1 to P.W.3 cannot be sustained. Apart from that the chemical examination report with regard to the blood stains in the weapons and the clothes worn by accused would not in any way support the case of the prosecution case since the said clothes were recovered without any confession or on the basis of the confession that could be relied upon by the Court. We have already found that the confession statements given by the accused 1 to 6 and the recovery made upon cannot be relied upon as the witness-P.W.8, who was said to have been present at the time of confession and recovery is close relative to the deceased person. The circumstantial evidence said to have adduced by the prosecution and the consequent chemical examination report and serological report cannot also be helpful to the prosecution for making any corroboration of the evidence of P.Ws.1 to P.W.3. In these circumstances the dislocation of the place of occurrence as spoken to by P.Ws.1 to P.W.3 with the documentary evidence produced by the prosecution also makes the case suspicious. In these circumstances the Lower Court had considered all these points and had come to the conclusion of disbelieving the evidence of the prosecution. The reasons assigned by the Trial Court for disbelieving the evidence of prosecution appears to be sound.

12. Therefore, we are of the considered view that it is not fair on our part to interfere with the Judgment of the Trial Court in acquitting the accused 1 to 6 as the Trial Court had come to the said conclusion on sound reasons and hence, the appeal preferred by the State against the Judgment of the acquittal deserves no

merit and accordingly we are dismissing the same by confirming the acquittal of the accused by the learned IV Additional Session Judge, Chennai made in S.C. No. 150 of 1999 dated 18.01.2001.