

(2003) 07 MAD CK 0028
In the Madras High Court
Case No : Criminal A. No. 529 of 2000

Veerasamy

APPELLANT

Vs

State, by Inspector of Police

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 302, 323, 341

Citation : (2003) 07 MAD CK 0028

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

Bench : Division Bench

Advocate : M.G.L. Sankkaran, for the Appellant; E. Raja, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

1. The appellant is the sole accused in S.C.No.66 of 1999 on the file of the Principal Sessions Judge, Virudhunagar District, Srivilliputhur. He was

convicted for the offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo

simple imprisonment for six months and also convicted for the offence u/s 341 I.P.C. and sentenced to undergo simple imprisonment for one

month. Challenging the said conviction and sentence, he has filed this appeal.

2. Brief facts of the prosecution case are as follows:-

(a) The deceased is the father of P.W.1 and belongs to Pillaigoundanpatti village. The deceased was a broker in cattle business. The accused

belongs to Kommangiyapuram village. On 16-11-1998, the deceased and his son P.W.1 went to Chithiraigoundanpatti to purchase a cow. They

returned to Ezhaiyrampannai and since the deceased wanted to purchase snuff,

they went to the shop of one Krishnasamy. The owner of the shop was not available. When they returned from the shop, the accused came there and demanded money from the deceased for the purpose of consuming liquor. The deceased refused to give money. Immediately, the accused caught hold of the towel on the neck of the deceased, pushed him down and dashed his head on the floor and also kicked him on his chest, stomach and other vital parts of the body. When P.W.1 intervened, the accused pushed him also and kicked him. The accused fled away from the scene.

(b) The deceased told his son P.W.1 that he was feeling pain in his body. Therefore, P.W.1 took the deceased, his father to Ezhaiyrampannai Police Station. At about 2.30 p.m., the deceased lodged Ex.P-1 complaint, recorded by P.W.8 Sub-Inspector of Police. P.W.8 registered the case in Crime No.106 of 1998 for the offences under Sections 341 and 323 I.P.C. With a medical memo, he sent the deceased along with one Police Constable, by name Rajapandi to Sattur Government Hospital for treatment. The deceased was taken to Sattur Government Hospital by P.W.1 in P.W.4's van.

(c) P.W.6 Dr. Iyyanar, Assistant Medical Officer, Government Hospital, Sattur examined the deceased and declared that he was already dead on the way to hospital. He issued Ex.P-3 accident register and sent Ex.P-8 death intimation through the Constable who accompanied the deceased to hospital.

(d) Meanwhile, on 16-11-1998 P.W.8 Sub-Inspector of Police went to the scene of occurrence at about 3.45 p.m., prepared Ex.P-2 observation mahazar and drew Ex.P-6 rough sketch in the presence of P.W.4 Kaliraj and one Shanmugavel. On receipt of Ex.P-7 death intimation, P.W.8 altered the case from Sections 341 and 323 I.P.C. to Section 302 I.P.C. Ex.P-8 is the express F.I.R. He sent the same to the Magistrate's Court, which was received by the Magistrate by 8 p.m. along with Ex.P-1 statement of the deceased.

(e) P.W.9 Inspector of Police, Vembakottai Police Station, who was in-charge of Ezhaiyrampannai Police Station, took up further investigation and proceeded to the Government Hospital, Sattur. He conducted inquest on the body of the deceased at about 6.30 p.m. on the same day in the

presence of Panchayatdars and examined the witnesses-P.Ws.1 to 3 and recorded their statements. Ex.P-9 is the inquest report. He sent the dead

body of the deceased for post-mortem.

(f) On 17-11-1998, P.W.7 Dr. Damodaran conducted post-mortem on the body of the deceased at about 9.45 p.m. and found the following

injuries:-

A lacerated wound 1-"" x 1½ x bone depth horizontally on the lateral aspect of left eyebrow. Symmetrical, Eyelids closed, tongue inside oral

cavity, Jaws clenched, teeth 6 | 7 / 7 | 7, no discharge from ears, thorax well formed, Abdomen distended, Penis, scrotum normal, Hands empty,

Peritoneal cavity empty, Position and colour of organs in thorax normal. No fracture ribs, Heart 300 grams, Dark fluid blood present, A rupture

about 1 x 1½ x 1½ cms on the Anterior and lower part of heart.

Lungs: Right 500 g. Left 480 gms. dry, Larynx, glottis normal, Hyoid intact.

Stomach: dilated, 150 gms. partially digested food particles, Pancreas

normal, Liver: 1200 gms. normal. G.B.: 20 ml. fluid present, spleen 190 gms. normal, Kidneys: Right 150 gms, Left 145 gms. Ruptures, Left

kidney in 4 places on the anterior surface each about 1/2 x 1/4 x 1/4 in size.

P.W.7 Doctor also gave an opinion that the deceased would appear to have died of shock due to multiple injuries about 17 to 19 hours prior to

post-mortem. Ex.P-4 is the post-mortem certificate.

(g) Continuing his investigation, on 17-11-1998, P.W.9 arrested the accused at 5.30 a.m. near Vanniyampattivilakku and sent him to judicial

custody. On 18-11-1998, P.W.10 Inspector of Police, Ezhaiyrampannai Police Station took up further investigation and examined and recorded

the statements of P.Ws.4,6,7 and 8. On 19-11-1998, he examined and recorded the statement of P.W.1. After completion of investigation, he laid

chargesheet against the accused for the offences under Sections 341, 323 and 302 I.P.C.

3. On behalf of the prosecution, P.Ws.1 to 10 have been examined, Exs.P-1 to P-9 have been filed and M.Os.1 to 4 have been marked.

4. When the accused was questioned about the incriminating circumstances appearing in the evidence of the prosecution witnesses, the accused

has denied all such evidence as false and not known and simply stated that he was taken from his house by Ezahaiyrampannai Police and was

foisted in this case. On behalf of the accused, no oral or documentary evidence was adduced before the trial Court.

5. The trial Court, on an appreciation of the oral and documentary evidence adduced before the Court, came to the conclusion that the offences

under Sections 341 and 302 I.P.C. have been proved against the accused and convicted the accused for the same and imposed sentence as

already mentioned. Hence, this appeal.

6. Mr. M.G.L. Sankkaran, learned counsel appearing for the appellant/accused would strenuously contend that after receipt of the injuries

mentioned in Ex.P-4 post-mortem certificate, the deceased could not have been in a conscious and fit state of mind to lodge Ex.P-1 complaint,

that P.W.1 could not have been present at the time of occurrence and the Police, on finding the body of the deceased, might have taken his thumb

impression in a paper and sent for P.W.1 and registered the case as if the deceased himself gave Ex.P-1 statement.

7. On these aspects, we have heard Mr. E. Raja, learned Additional Public Prosecutor.

8. We have given our anxious consideration to the rival contentions of both sides and carefully scrutinised all the materials available on record.

9. On a consideration of the materials available on record, we are reluctant to believe the evidence of P.W.1 and also to rely upon Ex.P-1

statement alleged to have been given by the deceased immediately after the occurrence, for the following reasons:-

(i) Though P.W.1 has attested Ex.P-1 statement, both Ex.P-1 and Ex.P-8, the printed form of F.I.R. have reached the Court at 8 p.m. along with

the alteration report. But the presence of P.W.1 is doubtful for the simple reason that P.W.4 van driver, who took the deceased to the hospital,

has categorically mentioned that when he was examined by the Police, he did not tell the Inspector that P.W.1 accompanied his father along with

the Constable Rajapandi. P.W.10 Inspector of Police also would confirm that P.W.4 did not tell him that P.W.1 accompanied his father and the

Constable Rajapandi in the van driven by P.W.4 when the deceased was taken to Sattur Hospital. P.W.6 Dr. Iyyanar who admitted the deceased

at the time of hospital and issued Ex.P-3 accident register, would categorically state that the deceased was brought only by the Constable

Rajapandi and nobody accompanied him. In Ex.P-3 also, it is specifically mentioned that the deceased was brought by the Constable Rajapandi

with a memo. In Ex.P-3 accident register, the time of receipt of injury, as to whether it was caused by known person or unknown person, such

kind of particulars were found missing. If really P.W.1 was present or if the complaint has been already registered by that time, the time of

occurrence and whether the injury was caused on the deceased by known or unknown person, would have been definitely mentioned in Ex.P-3.

Ex.P-3 accident register and the evidence of P.Ws.4 and 6 falsify the claim of P.W.1 that he was present along with his father at the time of

occurrence. Moreover, if P.W.1 was actually present and he was also assaulted by the deceased, P.W.1 also would have sustained some injuries.

But he was not treated for any such injury in the hospital. Therefore, the presence of P.W.1 for the reasons mentioned earlier at the time of the

alleged occurrence, is highly doubtful.

(ii) Now, let us consider as to whether Ex.P-1 statement could have been given by the deceased at the time as alleged by the prosecution. The

deceased was 72 years old at the time of occurrence. A perusal of Ex.P-4 post-mortem certificate would show that there was rupture on the head

and the anterior and lower part of the heart. There were also ruptures in four places of left kidney and also there was laceration in the left frontal

lobe of the brain. The Doctor has also given an opinion that the deceased could have died immediately after the occurrence after receipt of such

injuries. An aged person who has sustained such serious injuries on vital organs like brain, head, kidney, could not have given such a detailed

statement like Ex.P-1. If really P.W.1 had been present when Ex.P-1 was recorded, the Police would have preferred to get a complaint from

P.W.1 as to the occurrence, because after all, according to the prosecution case, P.W.1 is the eye-witness. Failure to get the complaint from

P.W.1 would only strengthen the contention of learned counsel for the appellant that the Police have obtained thumb impression of the deceased

after the death of the deceased, sent for P.W.1, registered the case and obtained the signature of P.W.1 as attestation in Ex.P-1 and also for

receipt of printed form of F.I.R. When P.W.1 was cross examined, he has admitted that he only signed in Ex.P-1 in night. This would only confirm

the contention of learned counsel for the appellant that Ex.P-1 would have come into existence much later than the time alleged by the prosecution,

only after knowing the death of the deceased and after receipt of Ex.P-8 death intimation.

10. For the above reasons, we are of the view that the prosecution has failed to prove the charges against the accused beyond all reasonable

doubt and the appellant/accused is entitled to get ""benefit of doubt"". The appeal is allowed, setting aside the conviction and sentence imposed on

the appellant/accused. He is acquitted of the charges. The fine amount, if paid by the accused, is directed to be refunded. He is directed to be set

at liberty forthwith, unless he is required in connection with any other case.