

Jayamani and Others Vs The State

Court: Madras High Court (Madurai Bench)

Date of Decision: Aug. 9, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 302, 323

Hon'ble Judges: R. Balasubramanian, J; K.N. Basha, J

Bench: Division Bench

Advocate: T.K. Gopalan, Nos. 2, 3, 4, 6, 7 and 8 and K. Jeganathan, Nos. 1 and 5, for the Appellant; Daniel Manoharan, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

R. Balasubramanian, J.

The appellants/eight in maber, were tried in s.c. No, 524 of 2005 on the file of the Additional court of session

(Fast Track Court No. III), Madurai, under Sections 147 and 148 IPC (A-6 to A-8), 342 IPC (A-6 to A-8), 302 IPC (A-1 to A-5) and 302

r/w 149 IPC (A-6 to A-8) At the and of the trial, the learned trial Judge found the accused guilty under various charger referred to above. On their

respective conviction, A-1 to A-5 stand sentenced to undergo imprisonment for life, namely u/s 302 IPC with a fine of Rs. 3,000/-, carrying a

default sentence and A-6 to A-8 also stand sentenced to undergo imprisonment for life for the offence u/s 302 r/w 149 IPC, with a fine amount as

indicated above. However/we are not referring to the other sentences imposed on then Hence they are before this Court in this appeal.

2. Heard Mr. K. Jeganathan, learned Counsel appearing for A-1 and A-5; Mr. T.K. Gopalan, learned Counsel appearing for rest of the accused

and the learned Additional Public Prosecutor for the State.

3. According to the prosecution, the occurrence took place at about 05.30 a.m. on 15.02.2005 when the accused attacked the victim by name

Lakshmanan, one after the other, resulting in his death. To prove their case, the prosecution examined P.Ws. 1 to 16, besides marking BXS. P-1

to P-17 and M.Os. 1 and 2. The defence on their side examined only one witness as D.W. 1 and marked two documents as Exs D-1 and D-2.

4. The prosecution case itself is that there is a dispute between the prosecution party and the accused party over a piece of land in Manuthu

Village. A-3 and A-4 are husband and wife, whose children are A-1 and A-2. A-5 is the wife of A-1. A-6 to A-8 are their friends. P.W. 1 is the

younger brother of the deceased, while P.W. 2 is the wife of P.W. 1. P.W. 3 is the wife of the deceased, while P.W. 4 is related to the deceased.

P.W. 5 is the son of P.W. 6 and P.W. 6 is the senior paternal uncle of P.W. 1. P.Ws. 1 to 5 are examined as eye witnesses to the crime. The facts

noted above show that, on both sides, the parties are closely related to each other.

5. According to the prosecution witnesses, at about 05.30 a.m., on the occurrence day, when Lakshmanan (since deceased) objected the

accused, party curing their concrete structure, namely concrete pillars, which, according to the prosecution party, is in the disputed land, the first

accused beat Lakshmanan with an iron rod; A-2, with an iron rod hit on his left aide neck; A-3, with a stone, attacked on back, while A-4 and A-

5 attacked Lakshmanan all over his body with stones. At that time, A-6 caught hold of one leg; while A-7 caught hold of the left hand of

Lakshmanan and A-8 caught hold of the right hand of Lakshmanan. on hearing the hue and cry, the witnesses go there and the accused made good

their escape. This is the sum and substance of the evidence of P.Ws. 1 to 5.

6. P.W.15 is the sub-Inspector of Police in the investigating police station before when at 09.00 a.m. on 15.02.2005, P.W. 1 appeared and gave a

written complaint Ex. P.1. which he registered in Crime No. 120 of 2005 under Sections 147, 148, 447, 323, 324 and 302 IPC. Ex. P.10 is the

printed First Information Report. He sent the Express records to the court as well as to the higher officials, P.W. 13 is the police constable who

carried the Express First information Report from P.W. 15 and delivered the same in the Court as well as to the higher officials.

7. P.W. 16 is the investigating officer, who, on receipt of the Express records in this case at 09.30 a.m. commenced the investigation by reaching

the crime scene at 11.00 a.m. At the crime scene, in the presence of witnesses, he prepared Ex. P.11, the observation mahazar and Ex. P.12, the

rough sketh. Between 12.00 noon and 2.00 p.m on that day, P.W. 16 held inquest over the dead body in the presence of panchayatdars and

witnesses. Ex. P.13 is the inquest report. Then he sent the dead body, with a requisition, to the hospital through P.W. 14, the police constable, for

post mortem.

8. P.W. 14 accordingly accompanied the dead body with the requisition to the hospital for post mortem. He was present during post mortem.

After post mortem, he handed over the dead body to relatives.

9. P.W. 8 is the duty doctor in the Government Hospital at Usilampatti, who, on receipt of the requisition, commenced post mortem at 5.15 p.m.

on 19.02.200C. During post mortem, he found. various symptoms as noted by him in Ex. P.3, the post mortem report. The symptoms noted

therein are as here under:

- 1) Abrasion in back below the left scapula 3 x 2 cm.
- 2) Abrasion over left fore head (frontal region) 2 cm x 2 cm.
- 3) A lacerated wound 2 cm x 2 cm x bone depth of left frontal region
- 4) A lacerated wound 2 cm x 2 cm x. 1 cm. 2 cm in front of left ear.
- 5) Abrasion over left side neck middle 2 cm x 1 cm.
- 6) Bleeding from left ear.
- 7) Lacerated wound 5 x 3 cm into bone depth associated contusion in right occipital region.

The doctor opined that the death would have occurred 12 to 14 hours prior to autopsy as a result of the injuries sustained on the brain and on the

skull (cranio cerebral injury). He also deposed the injuries found on the back of the deceased would have been caused with the use of stone and

the other injuries would have been caused with the use of iron rods and wooden clubs. While cross-examined. By the defence, the doctor admitted

that all the injuries are simple in nature and the examination of viscera did not reveal any poison.

10. P.W. 16 continued the investigation by examining witnesses and recording their statements. At 11.30 a.m. on 16.02.2005 in the bus stop of

Karampatti, he arrested A-3, A-4, A-5 and A-8 and. examined them in the presence of witnesses and at that time they gave a voluntary

confession statement. Pursuant to which, sticks, namely M.O. 2 (series) came to be recovered under Ex. P.14 attested by witnesses. At 10.00

a.m. on 17.02.2005 P.W. 16 arrested A-6 and sent him for judicial remand.

11. P.W. 6 is the father of P.W. 5 and he is not an eye witness to the crime. P.W. is a witness to the preparation of Ex. P.11 observation mahazar.

He admitted his signature in the observation manager as Ex. P.2. P.W. 9 is the Village Administrative Officer whose evidence shows that the

disputed land is entered in the.revenue records in the name of the accused party. Ex. D.I is the revenue record evidencing the same and Ex.D-2 is

the tax receipt P.W. 10. examined to prove the arrest of A-3, A-4, A-5 and A-8, turned hostile, P.W. 11 is a witness to the arrest of A-1 and A-

7 and their examination leading to the recovery as spoken to by P.W. 16. He admits his signature in the confession statement of A-1 marked as

EX. P.6 and in the recovery mahazar as Ex. P.7. P.W. 12 is examined to prove the arrest of A-1 and A-7 and he turned hostile. But, however his

admitted signature in the confession statement and the recovery mahazar are marked, as Exs.P-8 and P-9.

12. P.W. 16 arrested A-1 and A-7 at about 11.00 a.m. on. 18.02.2004 and examined then in the presence of witnesses. Each one of the accused

gave a separate voluntary statement which he recorded. Pursuant to A-1'S confession statement, the admissible portion of which is marked as Ex.

P.15, under Ex. P.16 M.O. 1 (series) iron rods came to be recovered. At 10.00 a.m. on 22.03.2004 P.W. 16 arrested A-2 and sent him for

judicial remand. All the case properties were sent to the Court. After completing the remaining legal formalities, P.W. 16 filed the final report

against the accused on 28.04.2005.

13. When the accused were questioned u/s 313 of the code of Criminal Procedure on the basis of the incriminating circumstances made available

against each one of them, they denied each and every circumstances put up against them as false and contrary to facts. The first accused examined

himself as D.W. 1. in his evidence, he would state that the disputed land belongs to them over which they have been exercising their rights. He had

also deposed about the dispute between the parties in the past over that property. He would then state that on the occurrence day morning, none

of the accused were present in the crime scene. Ex.D-1 is the revenue record allowing that the disputed property is in the name of the accused.

Exs.D-2 is the tax receipt.

14. Mr.K. Jeganathan, learned Counsel appearing for A-1 and A-5, would argue that even if the entire prosecution case is accepted as true, then,

from the very same materials, this court can conclude that the accused are shown to have acted in self-defence while there was a threat to their

property and in so acting in self-defence they have not exceeded the limitation. If that could be the conclusion which can be arrived at, it is argued

by Mr. Jeganathan, learned Counsel, then the accused are entitled to an, acquittal. It is also his submission that having regard to the sequence of

events that are shown, to have taken place, all the accused were already there in their property curing the concrete pillars and it is only the

deceased, who go there and obstruct the accused from continuing the work and therefore there is no question of the accused forming themselves

into members of unlawful assembly, especially when in the midst of such protest, all of a sudden, A-1 is shown to have attacked the victim.

15. Mr. T.K. Gopalan, learned Counsel appearing for the remaining accused, took enormous pain to contend that from the evidence of P.W. 16,

the Investigating Officer had admitted when cross-examined, that P.Ws.I to 3, during investigation, told him that they are residing at

Mahadevanpatti and Mahadevanpatti is at a distance of 25 kilometres from the crime scene. On the above evidence it is argued that therefore

P.Ws. 1 to 3 could not have been in the village at all to see the occurrence. It is his further submission that if P.Ws. 1 to 3's presence in the village

cannot be believed, then the evidence of P.W. 5 that he followed P.W. 1. to 3 to see the occurrence equally cannot be believed. Therefore, it is

argued that the prosecution had fabricated the case after the arrival of P.W. 1 In the village in discussion with this police and that is the reason Ex.

P.1 complaint had reached the court only at 5.00 p.m. on 15.02.2005 , though, within one hour after the registration of the crime, the complaint

could have reached the court. The complaint, according to the prosecution, came to be registered at about 09.00 a.m. and there is absolutely no

explanation, whatsoever as to why the complaint had reached the court only at 5.00 p.m. on that day evening. Therefore it is argued by the learned

Counsel that this court can easily hold that the prosecution is holding back the origin of the case and on that basis the entire prosecution can be

thrown out.

16. we heard the learned Additional Public Prosecutor on the above submissions. Having, regard to the submissions made by the learned Counsel

on either aide, we went through; the entire records. There is medical evidence to show that Laksmanan died due to homicidal violence. P.W. 8's

evidence is that all the injuries noted are simple in nature and in fact, he would go one step further and say that they are all superficial injuries and

they may be due to throwing of stones. He further admitted that if a person falls forcefully on his back, the injuries found on the head's back are,

possible, and as such it may result in a shock to the brain.

17. We carefully applied our mind to the argument advanced by Mr. T.K. Gopalan as to whether we can disbelieve the presence of P.Ws. 1 to 3

in the scene village at the time when the crime is shown to have been committed. It is true that P.W.16 had admitted in cross-examination that

P.Ws. 1 to 3 did tell during investigation that they are residing at Mahadevanpatti. From this, the. one conclusion that can be arrived at is that they

are the ordinary residents of Mahadevanpatti. That does not necessarily mean that they could not have visited the village in question on the date of

occurrence or even a day earlier.

18. There is no dispute that the deceased was residing in the scene village. There is also no dispute that P.W. 1's relatives are in the scene village.

Therefore, from the were disclosure made by P.W. 1 to 3 during investigation to P.W. 16 that they live at Mahadevanpatti and P.W. 1 had stated

in his evidence in crose that their ancient house in Manuthu had crumbled down a couple of decades before, it cannot be said that P.Ws. 1 to 3

could not have gone to the scene village at all. All the three witnesses are very firm in their evidence that they were in the scene village. We went

through the cross-examination of all the witnesses and we do not find any worthwhile attempt having been made by the defence to discredit their

presence in the scene village. Therefore, without any hesitation, we reject the argument advanced by Mr. T.K. Gopalan based on the evidence of

P.W. 16 as referred to above, that P.Ws. 1 to 3 should have been only at Mahadevanpatti on the date when the crime was committed and

therefore, it would have been impossible for them to be present at the crime scene as eye-witnesses to the occurrence, Once this argument is

rejected, then this Court has to examine the evidence of P.W. 1 to 5 as to whether it can be accepted or not.

19. Keeping in mind the fact that all the witnesses are not only related inter se, but also related to the deceased, we proceed to examine the

evidence of P.Ws. 1 to 5 with (sic) care and. caution. Their evidence in sum and substance establish beyond doubt as. To what had happened on

that fateful morning. P.W. 1 to 3 consistently say that all the accused were at the construction site doing some work there, pouring water to cure the

concrete pillars that have been put up. From the plan Ex. P.12, we could see that concrete pillars have come up in that site. it is also seen from that

there are nine concrete pillars. Therefore, the presence of all the accused belonging to the same family, except A-6 to A-8, at the crime scene,

cannot be with any sinister motive but only with, a view to protect their newly constructed property by curing it with water. The consistent case of

the prosecution is that Lakshmanan want there to object and in fact he objected the accused party as to why they are pouring water on the

concrete pillars, which they have already put. Their evidence even shows that all the accused party were pouring water from plastic vessel which

they have in their hands and Lakshmanan, who had gone there in anger, was pulling the plastic vessels from the hands of the women present there.

Therefore in all probability, on Lakshmanan reaching the crime scene and questioning the accused party about their propriety in curing the concrete

pillars already put up, it is obvious the occurrence could have taken place.

20. P.W. 2. who is none else than P.W. 11 a wife and P.W. 1. being the elder brother of the deceased in her evidence says that she advised the

victim Lakshmananan not to go there, but yet he proceeded there in. all anger, misconducted himself with the women folk there by pulling the

vessels in their hands. Therefore, without any hesitation, we could safely hold that the presence of the accused at the construction site is only with

reference to the exercise of their rights over the property. (documentary evidence shows that the property belonga to them), there is also oral

evidence available through P.W. 9 to show that the property belongs to them, The evidence shows that Lakshmanan alone had gone there to

protest their act. If we view the entire event that had taken place from that angle, construction Materials available: at that place namely cement,

bricks, sand, iron rods, etc., it is clear to our mind that on Lakshmanan interfering with their work the evidence shows that A-1 picking up an iron

rod available there gave one blow on the head of Lakshmanan, followed by other accused attacking the deceased According to the prosecution,

some of the accused used hands, some of the accused used sticks and some of the accused used stones and A-6 to A-8 caught hold of the victim.

Doctor's evidence is that the injuries are simple and superficial in nature.

21. Under these circumstances, we hold that the prosecution has definitely established that Lakshmanan reaching the crime scene protested the

accused party from proceeding with their work in the construction site it was not liked to by the accused party; Lakshmanan tried to pull the

vessels from the hands of women folk of the accused and at that time the occurrence had taken place. Though the prosecution party had let in

evidence to show that the property in dispute belongs to them, yet we find that they miserably failed to prove it by any documentary evidence, while

the defence have proved to the contrary with oral (P.W. 9 and D.W. 1) and documentary evidence (Ex.D-1, Ex.D-2).

22. In the light of the discussions, when we examined the act of the accused as stated earlier, (i.e) each one had given blow and that is only in

protecting their rights in the property. In other words, they have acted only in self-defence. one should not forget that the dispute between the

parties have been going on for almost two years preceding the occurrence and therefore the accused party might have entertained a serious

apprehension in their mind at the crime scene when Lakshmanan goes there to protest that their rights may once again be interfered with and in

such circumstances, the accused could have acted in the manner spoken to by the prosecution. We also find from the materials available on record

and the material evidence on record that the accused have not exceeded their limit in acting in self-defence.

23. Therefore, while holding that the prosecution proved their case of involvement of the accused in the death of Lakshmanan, we also hold that

from the materials available on record that the accused have acted so only in self-defence and we find that they have not exceeded their limit in

acting so. If that is so, anything done within the limit of self-defence, as recognised by law, would not be an offence. Therefore, we are inclined to

give the benefit of our discussion to the accused and acquit all of them of the offences for

24. Accordingly the appeal is allowed by setting aside the judgment under challenge and all the appellants are acquitted of the offences for which

they were charged, tried and convicted. It is represented that appellant Nos. 1 to 3 are in jail and appellant Nos. 4 to 8 are on bail. Therefore,

appellant NOS. 1 to 3 are directed to be released forthwith, unless their presence is required in connection with any other case and in respect of

appellant Nos. 4 to 6, bail bonds executed by them shall stand terminated. Fine amount if any paid by the appellants would be refunded to them.