

State Vs Basavan @ Mani @ Latchumanan and Others

Court: Madras High Court

Date of Decision: Oct. 20, 2010

Acts Referred: Arms Act, 1959 â€” Section 25(1), 3, 5
Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 313
Penal Code, 1860 (IPC) â€” Section 120, 120B, 147, 148, 149

Hon'ble Judges: M. Chockalingam, J; C.S. Karnan, J

Bench: Division Bench

Advocate: V.R. Balasubramanian, app, for the Appellant; R. Thamarai Selvan, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

The State appeals.

1. Challenge is made to a judgment of the Additional Sessions Division, Dharmapuri, made in S.C. No. 144/2003 whereby an order of acquittal of

the Respondents/A-1 to A-9 was made in respect of the charges levelled against them. Two other accused originally shown as A-4 and A-8, died,

and hence the charges against them stood abated. The charges framed by the trial Court against the accused are as follows:

ACCUSED CHARGES

A-2, A-5, A-6 & A-7 147 IPC

A-1 & A-3 148 IPC

A-1 to A-6 364(A) IPC

A-1 to A-6 344 IPC

A-1 to A-6 120(B) IPC

A-1 to A-6 147 IPC (2 counts)

A-1 & A-3 to A-6 148 IPC (2 counts)

A-1 to A-6 149 r/w 302 IPC

A-1 to A-6 201 r/w 34 IPC

A-7 & A-8 202 IPC

A-9 202 IPC

A-1 to A-3 3 r/w 25(1)(b)(a) of Indian

Arms Act, 1959

A-9 3 r/w 25(1)(b)(a) & 5 r/w

25(1)(a) of Indian Arms Act,

1959

2. The case of the prosecution can be stated as follows:

(a) All the Respondents were close associates of sandalwood trafficker Veerappan. The three deceased namely Abhimanyu (D1), Pazhani (D2)

and Chinnapaiyan @ Mahadevan (D3) were working as Forest Guards in Hokenakal Range, Kuthirayan Beat. The said Veerappan and the

Respondents/accused indulged in hunting elephants. They kidnapped all the three Forest Guards on 25.4.1999, when they were on duty and kept

them in their illegal custody. They also sent a letter through P.W.2 to the District Collector, Erode, examined as P.W.29, demanding a ransom of

Rs. 3 crores for releasing the said three Forest Guards. That apart, A-4 also spoke to the Collector through phone on 2.5.1999 in that regard.

When P.W.29, the District Collector, negated the demand, on 3.5.1999 at about 11.00 A.M., on the directions of A-1, A-8 asked all the three

Forest Guards stand one after another. They were tied with ropes. A-1 to A-3 stood around them with rifles. The Respondents 4 to 7 were also

standing around restraining them from moving about. On the directions of A-1, A-8 shot all the three Forest Guards with SB ML rifle and caused

their death at the spot instantaneously. After committing the murder, in order to screen the evidence, they burnt all the three dead bodies.

(b) P.W.6, the wife of D3 Mahadevan and P.W.7, the wife of D2 Pazhani, reported to the higher-ups of the department that their husbands went

to duty on 23.4.1999, but did not return. While the matter stood thus, P.W.2 and a few others met P.W.1, the Assistant Forest Ranger, and

handed over four letters marked as Exs.P2 to P5, and also an audio cassette marked as M.O.1, to him and informed that those three guards were

kidnapped by the associates of Veerappan, and they were under the illegal custody. P.W.1 after looking into the letters and hearing the audio

cassette came to know that the associates of Veerappan have kidnapped and kept them in illegal custody. Then P.W.1 gave Ex.P1, the complaint,

to P.W.31, the Additional Superintendent of Police, Pennagaram, who on receipt of the same, made an endorsement and forwarded to P.W.32,

the Sub Inspector of Police, Pennagaram Police Station, for necessary action. P.W.32 in turn, registered a case in Crime No. 317 of 1999 under

Sections 363 and 368 of Indian Penal Code. The printed FIR, Ex.P41, was despatched to the Court.

(c) On receipt of the copy of the FIR at about 11.50 A.M. on 28.4.1999, P.W.33, the Inspector of Police of Pennagaram Circle, took up

investigation. He recovered the four letters and also the audio cassette marked as Exs.P2 to P5 and M.O.1 respectively, under Form 95. Then he

proceeded to the scene of occurrence, made an inspection and prepared an observation mahazar Ex.P43. He enquired 101 witnesses and

recorded their statements.

(d) Pursuant to the directions of the Superintendent of Police, Dharmapuri, P.W.34, the Inspector of Police of Bommi Circle, altered the case to

Sections 147, 148, 363, 342, 385, 302, 201 Indian Penal Code read with 25(1)(a) of Indian Arms Act. On 12.7.1999 at about 8.00 A.M., he

arrested the deceased accused Govindan in the presence of witnesses and recorded the confessional statement given by him. The admissible part is

marked as Ex.P44. The said accused Govindan identified A-5 at about 11.30 A.M. at Pazhaiyur Bus Stop. When A-5 was arrested, he came

forward to give a confessional statement. The same was recorded. The admissible part is marked as Ex.P45. On the same date at about 6.00

P.M., A-9 Nallathambi was arrested, and he came forward to give a confessional statement voluntarily. All the three accused were produced

before the Investigating Officer namely Chinnaraj, the Circle Inspector of Police, Pennagaram.

(e) In order to ascertain the information received on 8.6.1999, the said Chinnaraj met the Editor Elangovan, Nakkiran Magazine and also the

higher-ups of the "Q" Branch and ascertained that the terrorists had no involvement in the incident. Then he caused the arrest of A-3 at about 4.00

A.M. on 12.7.1999, at Dharmapuri Bye pass road. He came forward to give a confessional statement voluntarily. After recording the confession

of A-3, the case was altered to Sections 120(b), 147, 148, 363, 342, 385, 302, 201 of Indian Penal Code read with Section 25(1)(a) of Indian

Arms Act. The altered FIR, Ex.P46, was sent to the Court through the Head Constable. A-3 took the Investigator and police party to his native

village Madam and identified the place in his land where the double barrel gun which was handed over to him by A-1, was hidden under the earth.

From the place identified by him, the double barrel gun and also the spare parts were unearthed, and they were recovered under a cover of

mahazar. The Investigator prepared an observation mahazar and also a rough sketch, Ex.P47, with regard to that spot. Then at about 16.30 hours,

he identified A-6, and he was arrested. He came forward to give a confessional statement. The same was recorded. He took the Investigator to his

house and produced M.O.19, national tape-recorder, and M.O.20 three cassettes. They were all recovered under a cover of mahazar. Following

the same, A-4 was arrested at Polur, who was identified by the other accused. The confessional statement given by him was recorded.

(f) The further investigation was taken up by P.W.37, the Circle Inspector of Police, Pennagaram. On 2.6.2002 at about 8.30 A.M., he arrested

A-2. The confessional statement given by him was recorded in the presence of P.W.20, the Village Administrative Officer, and his Assistant

Muniraj. A-2 took the Investigator to his house and produced a country gun which was hidden under the earth. The same was recovered under a

cover of mahazar in the presence of the above witnesses.

(g) On the very day at about 3.00 P.M., the Investigator caused the arrest of A-1 Basavan @ Mani, who was produced by the Inspector of

Police Kandasamy, STF, along with Rs. 4430/- and also a country gun produced by him. A-1 gave a confessional statement voluntarily, and the

same was recorded. The admissible part of the confessional statement of A-1 is marked as Ex.P20. Pursuant to the confessional statement, he

produced M.O.31, TVS 50 bearing registration No. KA 02 K 6795. The same was recovered under a cover of mahazar. The accused was

brought to the station and he was sent for judicial remand. All the material objects recovered were sent to the Judicial Magistrate's Court,

Pennagaram.

(h) On 13.6.2002, A-1 gave an additional confessional statement. Then he took the police party to his house at Appavu Nagar, Osur, on

16.6.2002 and produced two tour bags and also a country gun. They were recovered under a cover of mahazar. A-1 was sent for judicial

remand on 17.6.2002. These material objects were also sent to the Judicial Magistrate's Court, Pennagaram. Since A-1 was involved in number

of grave crimes, the Investigator made recommendations for detaining him under Act 14/82 as Goonda. All the guns, rifles and bullets were sent to

the Firearm Expert for the purpose of analysis. The expert's report was also received. On 18.8.2002, the diaries written by D1 and D2 were

recovered through the Ranger Manokaran. They were also sent to the Court. Then a requisition was placed before the Judicial Magistrate,

Pennagaram, to send those diaries to the handwriting expert, and a report under Ex.P39 was received. The Investigator sought for sanction from

the District Collector to prosecute the accused under the provisions of the Arms Act. The same was accorded on 28.8.2002. The Investigator

conducted inquest at the place where the ashes of the three dead bodies were found. Those inquest reports are marked as Exs.P49 to P51

respectively. On completion of the investigation, the Investigating Officer filed the final report on 29.9.2002, under Sections 147, 148, 364(A),

344, 120(B), 302, 149 read with 302, 201 and 202 Indian Penal Code and Section 3 read with 25(1)(b)(a) of the Indian Arms Act.

3. The case was committed to Court of Sessions, and necessary charges were framed. In order to establish the charges, the prosecution marched

37 witnesses and also relied on 55 exhibits and 41 material objects. On completion of the evidence on the side of the prosecution, the

Respondents/accused were questioned u/s 313 of Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the

prosecution witnesses which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either

side, and took the view that the prosecution has not proved the case beyond reasonable doubt and hence acquitted the Respondents from all the

charges. Hence this appeal at the instance of the State.

4. Assailing the judgment of acquittal made by the trial Court, the learned Additional Public Prosecutor would submit that in the instant case, the

prosecution has rested its case on the circumstantial evidence; that the circumstances relied on by the prosecution are the missing of the three

deceased from 23.4.1999, and they were actually murdered, and the dead bodies were burnt on 3.5.1999; that apart from that, from the evidence

of P.W.2, it would be quite clear that he handed over four letters and the tape-recorder given by the accused demanding ransom, to the Forest

Range Officer; that the evidence of P.W.2 is corroborated by the evidence of P.W.4; that it is pertinent to point out that M.O.5, gold ring, which

was worn by D3 Mahadevan while he went on duty, was recovered from A-3; that the same was also identified by P.W.6, the wife of D3, as that

of her husband; that it is also to be noted that P. Ws.12, 13 and 15 were examined to speak about the recovery of the ashes and bones of the

three deceased; that the analyst's report would also indicate that they were that of human beings; that it is also pertinent to point out that on the

information of A-3, M.O.13, rifle, which was used for the commission of the offence, was recovered; that according to P.W.29, the Collector of

Erode, the accused demanded ransom over phone and it was refused by him; that from the evidence, it would be quite clear that on the day of

refusal, they were murdered; that though the prosecution has placed and proved the necessary circumstances indicating the nexus of the accused

with the crime, the trial Judge has taken an erroneous view and acquitted the Respondents/accused, and hence they have got to be dealt with in

accordance with law.

5. In answer to the above contentions, the learned Counsel for the Respondents would submit that there is absolutely no evidence indicating the

involvement of the Respondents in the commission of the offence; that mere recovery of M.O.5, gold ring, from A-3 would not suffice pointing to

the guilt of the accused; that the trial Court has considered the evidence in full and has come to the correct conclusion that the prosecution has not

proved the case; and hence the judgment of the trial Court has got to be affirmed.

6. The Court paid its anxious consideration on the submissions made on either side.

7. At the outset, it is apt and appropriate to state that when the judgment of the trial Court recording an order of acquittal, is challenged by the

State, unless and until it is seen that the judgment is found to be perverse or the reasons adduced by the trial Court for recording an order of

acquittal, do not stand to the reason, the Court should not disturb the judgment. That apart, in a given case, where there are two views possible as

to the particular situation, the view which is favourable to the accused, should be taken into account. After applying this cardinal principle, the

Court is afraid whether it could set aside the judgment of the trial Court.

8. As could be seen above, the prosecution came with the specific case that the Respondents who were arrayed as A-1 to A-9 respectively,

kidnapped the three deceased Abhimanyu, Pazhani and Chinnapaiyan @ Mahadevan who were working as Forest Guards at Hokenakal Range,

Kuthirayan Beat, on 25.4.1999, and since their demand for ransom made through a letter and also telephonic communication, to P.W.29, the

District Collector, Erode, was not met, all the three Guards were done to death, and in order to screen the evidence, they burnt the dead bodies.

In order to establish the same, the prosecution had no direct evidence to offer before the trial Court. Thus it rested its case on the circumstantial

evidence. It is settled proposition of law that in a given case where the prosecution rests its case exclusively on the circumstantial evidence, the

circumstances must be placed and proved without a snap and also be pointing to the hypothesis that except the accused, no one could have

committed the offence. In the instant case, Ex.P1, the complaint, was given by P.W.1 to P.W.31, the Additional Superintendent of Police. On the

strength of the endorsement made by him, a case came to be registered by the Sub Inspector of Police, Pennagaram, in Crime No. 317/99. The

Investigating Officer has recovered four letters marked as Exs.P2 to P5, and also an audio cassette marked as M.O.1 produced by P.W.2,

Mathan. Though a statement was recorded from him that four persons came to him and handed over the said four letters and the audio cassette, he

has not stated anything about the identity of those persons; but, on the contrary, he has turned hostile. Hence his evidence was not useful to the

prosecution.

9. The specific charge that was levelled against the Respondents was that the Respondents 1 to 8 and also the other deceased accused actually

abducted the three Forest Guards. To that effect, the prosecution marshaled witnesses and also relied on the above documents. It is pertinent to

point out that before 12.7.1999, the Investigator has examined not less than 40 witnesses and their statements were recorded u/s 161 of Code of

Criminal Procedure. It remains to be stated that all the witnesses have spoken to the effect that all the three Forest Guards were kidnapped by the

Sandalwood Trafficker Veerappan, and thus the basis of the charge that the Respondents kidnapped the three Forest Guards as put forth by the

prosecution before the trial Court, became highly doubtful.

10. The prosecution much relied on Ex.P2, letter, alleged to have been written by an associate of Veerappan by name Sethukuli Govindan, but no

investigation was done by the Investigator in order to ascertain by whom the said letter was actually written. From the evidence of the Village

Administrative Officer, P. Ws.13, it would be quite clear that the Investigator during investigation has recovered bone pieces and also ashes, and

they were sent for analysis to the Forensic Sciences Department. From the report, Ex.P34, and also the evidence of P.W.30, an expert from the

Forensic Sciences Department, it cannot be disputed that they were the skeleton remains of the deceased. But, the prosecution, in the considered

opinion of the Court did not place sufficient evidence as to the involvement of the Respondents. There was no investigation in respect of Exs.P52

to P55, the letters, as to by whom they were written and where from they were written. On the contrary, the Investigating Officer has proceeded

only with the xerox copy as found in Ex.P40.

11. Much reliance was placed on the confessional statement given by A-3 in the presence of P.W.14, and also the recovery of the rifles and

bullets, marked as M. Os.12 to 15 respectively. It is not the case of the prosecution that A-3 caused the death of the three persons by shooting

them. The specific case of the prosecution was that it was A-8 who shot all the three dead. Even assuming M.O.13, rifle, was recovered from A-

3, it was not used by him, but was used by one Ammasi and hence it cannot by itself speak of the nexus of A-3 to the crime in question or the

other accused. It is admitted that at the time of the arrest of A-3, photographs and videos were taken. Both the photographer and the

videographer were shown as witnesses in the list of witnesses. But neither of them was examined, nor the photograph or video cassette was

produced before the Court. The trial Judge has pointed out that P.W.6, Rathna, the wife of D3 Mahadevan, and P.W.7 Jeyanthi, the wife of D2

Pazhani, after hearing the voices recorded in the cassette, ascertained that they were that of their husbands. The message recorded in the cassette,

was to the effect that they were actually kidnapped by Veerappan. But contrarily, the prosecution came with the specific case that they were

kidnapped by A-1 to A-6 and also the deceased accused Ammasi and Govindan.

12. Apart from the above, all the accused were arrested pursuant to the confessional statement recorded from A-3. Though the confessional

statements were recorded from the other accused, no incriminating circumstances were recovered from them indicating the nexus of the crime with

those accused. Pointing to the recovery of M.O.5, gold ring, in the place where from the skeleton bone pieces and ashes were recovered, the

learned Additional Public Prosecutor pointed out that it was done at the instance of A-3 and hence it would suffice pointing to the guilt of A3. This

contention cannot be accepted for more reasons than one. It is not the case of the prosecution that it was A-3 who shot them dead. Even as per

the prosecution case, A-3 was only a stander by. There was no reason why the persons who shot them dead, should leave the gold ornament in

that place. Even assuming it was left, it would not have been available for a long time till it was recovered. Merely because of the recovery of

M.O.5, gold ring, it cannot be stated that the prosecution has proved the accusation made against A-3. There is no evidence to indicate in the

entire materials that A-3 had involvement either in the kidnapping or in the commission of the offence of murder of three Forest Guards.

13. It is pertinent to point out that it was not the statements of P. Ws.2 and 3 which were originally recorded by the Investigating Officer, that the

four persons who handed over the letters and cassette, were known to them already. Under such circumstances, the Investigator should have

taken steps for the conduct of a test identification parade. But no steps were taken in that regard. No explanation was forthcoming from the

prosecution. It can be well stated that the trial Judge has marshalled the evidence proper, considered the same and made an order of acquittal. This

Court does not find anything to interfere in the judgment of the trial Court.

14. In the result, this criminal appeal fails, and the same is dismissed confirming the judgment of the trial Court.