

(2004) 06 MAD CK 0109

Madras High Court

Case No: Criminal Appeal No. 287 of 1996

Ashok Kumar and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 16, 2004

Citation: (2005) 1 LW(Cri) 67

Hon'ble Judges: S.K. Krishnan, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: K.V. Sridharan, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Karpagavinayagam, J.

The appellants are accused 1 to 7. Having aggrieved over the conviction imposed upon them for the offences under Sections 302, 302 read with 149, 302 read with 109, 447, 341 and 148 IPC, this Appeal has been filed.

2. The facts leading to the conviction are as follows:

(a) Deceased Kumararaja in this case was owning lands in Ammeri Village, Gingee Taluk. Nearby lands were in the possession and enjoyment of the accused. Accused 1 to 4 are the sons of A5 Chakravarthy Nainar. A6 is the brother of A5. A7 is the wife of A5. Claiming share of the land belonged to Kumararaja, they caused disturbance to the possession of land in question. With reference to the same, there were criminal cases pending against A5 and A6.

(b) In order to attend the criminal case, which was pending in the Court at Gingee, A5 and A6 on 29.10.1993 at about 6.00 AM left the village. While leaving the village, they had instructed A1 to A4 to prevent the deceased from ploughing the land in question and if deceased Kumararaja ploughed the land in spite of the warning, he should be killed.

(c) At about 8.30 AM, deceased Kumararaja went to the land in question and began to plough the land. This was objected to by accused 1 to 4. The deceased immediately came to P.Ws.1 and 2, who were also having lands nearby, and complained about the illegal obstruction made by A1 to A4. Then, P.Ws.1 and 2 advised him to convene a panchayat to settle the dispute. The deceased told them that no panchayat is necessary since the land is belonged to him. He requested both of them to come to the land in question and advise A1 to A4 not to obstruct him. Accordingly, P.Ws.1 and 2 went to the scene.

(d) When the deceased entered into the disputed land and tried to plough, A7 Gunasekariammal brought 4 Koduval knives and distributed to A1 to A4 and instigated them to kill the deceased. Then, A1 to A4 after receipt of the 4 Koduval knives began to attack the deceased. On receipt of the injuries, the deceased fell down. When P.Ws.1 and 2 cried, the accused threatened them also. Thereafter, they ran away with weapons from the scene. P.Ws.1 and 2 came near the deceased and found him dead on the spot.

(e) Immediately thereafter, P.W. 1 went to Valathi Police Station and gave a complaint (Ex. P-1) to P.W. 10 Head Constable at about 11.30 am. A case was registered in Crime No. 293/93 under Sections 147, 148, 341, 447, 324 and 302 r/w 109 IPC. Ex. P-12 is the First information report.

(f) On receipt of the copy of first information report, P.W. 11 Inspector of Police came to the scene of occurrence at about 12.30 pm. He prepared Observation Mahazar Ex. P-6 in the presence of P.W. 6. He conducted inquest over the body of the deceased in the presence of P.Ws.1 and 2 and other panchayatdars. Then, the dead body was sent for postmortem.

(g) In the meantime, P.W. 11 received news that the accused got concealed themselves in one Viswanatham's house. Therefore, P.W. 11 went to the house of Viswanatham and arrested all the accused. He recovered M.Os.1 to 4 from A1 to A4.

(h) P.W. 9 Doctor, conducted the post-mortem on 30.10.1993. He found 9 injuries. He opined through Ex. P-11 Post-Mortem Certificate that the deceased died of shock and haemorrhage due to multiple injuries.

(i) Then, P.W. 11 examined the other witnesses and sent the material objects for chemical analysis. After completion of the investigation, he filed the charge sheet against all the accused (A1 to A7) for the offences referred to above.

(j) During the course of trial, on the side of Prosecution, P.Ws.1 to 11 were examined, Exs.P-1 to P-15 were filed and M.Os.1 to 12 were marked.

(k) The accused when questioned u/s 313 of Cr.P.C, denied their complicity in the crime.

(1) The trial Court ultimately convicted A1 to A4 under Sections 302, 447, 341, 148 IPC; A5 and A6 under Sections 302 read with 109, 447, 341 read with 109 IPC; A7 under Sections 302 read with 109 and 302 read with 149 IPC. Aggrieved over the conviction, all the accused have filed this Appeal.

3. While the appeal is pending, A6 Rajan died. So, the appeal as against A6 is abated.

4. Mr. K.V. Sridharan, Learned Counsel for the appellants, would make the following contentions challenging the conviction:

(1) The evidence of eye witnesses P.Ws.1 and 2 is not credible since they are interested and motivated witnesses. P.W. 1's eldest sister's son married the younger sister of the deceased. P.W. 2 is the Pangali of the accused. There is a land bed dispute between them. There is also a theft complaint given against P.W. 2's son by A5. Therefore, their evidence cannot be relied upon.

(2) Further, there are lot of contradictions between the evidence of P.Ws.1 and 2 with reference to the time of occurrence and also the details of injuries inflicted on the deceased. Though it is stated that A2 gave a cut on the neck and shoulder with M.O.2 Koduval knife, there is no medical corroboration, as P.W. 9 would state through the post-mortem certificate and evidence that those injuries found on neck and shoulder are only abrasions. Further, P.W. 9 Doctor would state that these injuries would not have been caused by M.Os. 1 to 4.

(3) The conduct of P.Ws.1 and 2 in not making an attempt to prevent the attack would throw suspicion. Had they been present, the accused would have attacked them also. Though it is the case of the Prosecution that A5 and A6 instigated A1 to A4 to kill the deceased in the presence of P.Ws.1 and 4, P.Ws.1 and 4 did not choose to inform or warn the deceased about the instruction. This makes the evidence of P.Ws.1 and 4 with reference to the instigation as doubtful.

(4) As a matter of fact, the Valathi Po-lice Station received another complaint earlier to the complaint Ex. P-1. The said complaint was suppressed. There is also a contradiction with reference to the part played by A7 in regard to the distribution of M.Os.1 to 4 to A1 to A4 for attacking the deceased.

Under these circumstances, all the accused are liable to be acquitted giving the benefit of doubt.

5. In justification of the reasonings given by the trial Court, the learned Additional Public Prosecutor would contend that the evidence of ocular witnesses, namely, P.Ws.1 and 2, is clear and cogent and even though the Doctor P. W.9 has not given specific opinion with reference to the multiple injuries, the very fact that the deceased sustained 9 injuries on the vital parts of the body and died on the spot would clearly indicate that the deceased died due to the injuries and only at the instigation of accused 5 to 7, A1 to A4 caused the death of the deceased and as such, the conviction imposed by the trial court is perfectly legal.

6. We have given our anxious consideration to the respective contentions urged by the counsel on either side.

7. There is no dispute in the fact that both Prosecution party and accused party are belonging to the same village and they are all inter-related. As a matter of fact, even according to the defence counsel, P.W. 2, who stated that the accused are his Pangalis that A5 and A6 are own brothers and that P.W. 1 is an independent witness, who is neither interested with the deceased nor inimical against the accused. So, in such a circumstance, we have to evaluate the evidence of P.W. 1.

8. According to the Prosecution, the deceased Kumararaja was ploughing his land. At that time, A1 to A4 came and objected to the ploughing of land. This has been spoken to by P.W. 3. P.W. 2 is not an eye witness. Thereafter, according to P.W. 1, the deceased rushed to his land and complained that while he was ploughing, he was being prevented by A1 to A4. This was informed to P.W. 2 also, who was doing the agricultural work in his land situated nearby. So, both of them, namely, P.Ws. 1 and 2 went to the scene of occurrence in order to advise A1 to A4. In the meantime, the deceased entered into the land and tried to plough. Immediately A1 to A4 after receiving M.Os. 1 to 4 Koduvals from A7, their mother, began to give indiscriminate cuts on various parts of the body. The deceased died on the spot.

9. In regard to this aspect, we have got a clear evidence of P.W. 1. Though it is pointed out that so many contradictions between the evidence of P.Ws. 1 and 2, we do not find that there is any vital contradiction, which would affect the core of the Prosecution as projected by P. Ws. 1 and 2.

10. P.Ws.1 and 2 immediately after the occurrence went to the police station and gave the complaint Ex. P-1 to P.W. 10 Head Constable and the copy of the same has been received by the Judicial Magistrate without any delay. In the said complaint, these details have been clearly mentioned. The presence of P.W. 2 also mentioned in the complaint. P.W. 11 Inspector of Police, on getting the message came to the spot and conducted inquest. During the course of inquest, both eye witnesses P.Ws.1 and 2 were examined and on the same day, A1 to A4 were arrested and from them, M.Os.1 to 4 have been recovered. Even the Serologist's report contained the details to the effect that M.Os.1 to 4 contained the human blood. Under those circumstances, it cannot be said that the evidence of P.Ws.1 and 2 has to be discarded in view of the so called minor contradictions.

11. It is also pointed out that there is no medical corroboration for the ocular testimony. It is true that P.W. 9 Doctor has not deposed about the nature of injuries sustained by the deceased in his chief examination. It is pointed out by the Additional Public Prosecutor that post-mortem report contains the opinion about the nature of injuries. According to the Doctor, as per the post mortem report, the deceased would have died of shock and haemorrhage due to multiple injuries sustained. It is unfortunate to note that this has not been elicited by the Prosecutor

of the trial court while P.W. 9 Doctor was examined. But, that fact would not help the defence to hold that the Prosecution has not established the case beyond reasonable doubt. On the face of it, the nature of injuries as mentioned in the post-mortem report and also the evidence adduced by the Doctor would show that the serious injuries were inflicted on the head and other parts of the body. It is also established that after death of the deceased, P.W. 1 came to the police station and gave complaint at 11.30 A.M. The Inspector of Police also came to the spot and found the dead body and conducted the inquest. Therefore, even though there is no specific opinion mentioned in the evidence of P.W. 9 Doctor, the other materials as found in his deposition and the post-mortem report would clearly indicate that the deceased died on the spot only after sustaining the injuries inflicted by A1 to A4.

12. It is pointed out that though M.O.2 had been used, there is no cut injury on the neck and shoulder by A2. It is all depending upon the fact situation as to how the weapons were handled by the accused concerned. Even assuming that there is no sufficient corroboration through medical evidence, it is well settled that the ocular testimony, if reliable, cannot be discarded on that score. On the other hand, it has been elicited in the cross-examination that except injuries 7 to 9, all the other injuries could have been caused by M.Os.1 to 4. Under those circumstances, we have no doubt with regard to the fact that the occurrence had taken place at 8.45 AM and in that occurrence, the deceased was attacked and done to death by A1 to A4.

13. In regard to A5 and A6, it is stated that A5 had given instruction to A1 to A4 at about 6.00 AM that the deceased if trespassed into the land and ploughed the land, should be killed. According to the Prosecution, this instruction or instigation was made by A5 and A6 in the presence P.Ws.1 and 4. But, the reading of the evidence of P.Ws.1 and 4 would indicate that such an instruction would not have been given by A5 and A6 in their presence. According to P.W. 1, A5 and A6 gave the instruction in front of his house at about 6.00 AM. According to P.W. 4, at 6.00 AM, A5 and A6 instigated to kill the deceased in front of her house. Admittedly, the house of P.W. 4 is not situated near the house of P.W. 1. Under those circumstances, how those two people could have noticed the alleged instruction given by A5 and A6 is not known.

14. Further, if such an instruction had been given by A5 and A6 to A1 to A4 in the presence of P.W. 1, P.W. 1 would have given a warning to deceased Kumararaja, who came to him for complaining about the obstruction made by A1 to A4. Admittedly, no such cautioning was given. Further, he had not ever informed Kumararaja, the deceased about the instruction given by A5 and A6 to A1 to A4. Under those circumstances, we are not able to place reliance on this part, which has been played by A5 and A6.

15. Further, according to the Prosecution, P.W. 4 also had heard the conversation between A5 and A6 and A1 to A4. But, while going through the evidence of P.W. 11, it is clear that such a statement had not been given by P.W. 4 to P.W. 11. Therefore,

there is no acceptable material to hold that the occurrence had taken place only on the instruction or instigation given by A5 and A6. In such a fact situation, we have no other alternative except to hold that the offences against A5 and A6 have not been proved and consequently, the conviction imposed upon A5 and A6 is liable to be set aside.

16. With regard to A7, it is stated that A7 only came to the scene and distributed the weapons M.Os.1 to 4 to A1 to A4 to kill the deceased. Though this has been stated in Ex. P-1 and in the evidence of P.Ws. 1 and 2, there is a contradiction with reference to the presence of A7 at the scene in the evidence of P.W. 2. The relevant evidence of P.W. 2 is as follows:

So, this deposition given by P.W. 2 would indicate that all the four accused got the weapons from A7 even before P.Ws.1 and 2 came to the spot and they were found rushing towards the scene and thereafter, they attacked the deceased. If such a thing had happened, it cannot be said that P.W. 1 had heard the instruction given by A7 to A1 to A4. Even assuming that A1 to A4 got the weapons from A7 from a distant place, definitely, it cannot be said, in the absence of any material to show that A7 knew that when the weapons were given to A1 to A4 that A1 to A4 would kill the deceased, A7 instructed A1 to A4 to kill the deceased. Therefore, in the absence of the consistency in regard to the instigation made by A7, we cannot conclusively hold that A7 came to the spot and distributed the weapons for killing the deceased. As already stated, P.W. 2 in his cross-examination would assert that A7 did not come to the spot and A1 to A4 got the weapons from A7 at a distant place and came running to the spot and only when they came to the scene, P.Ws.1 and 2 reached the spot. Therefore, the evidence relating to the instruction given by A7 to A1 to A4 spoken to by P.Ws.1 and 2 cannot be acceptable as there is no consistency.

17. However, in respect of the other portion of the evidence of P.Ws.1 and 2 relating to the main occurrence, as we stated earlier, there is a consistency and as their evidence is cogent and convincing, we are to hold that the offence has been proved as against A1 to A4 and as such, they are liable to be convicted and correctly they have been convicted by the trial court.

18. For the reasons stated above, the conviction imposed upon A5 to A7 is liable to be set aside and accordingly set aside. Since A5 to A7 are acquitted u/s 148 IPC, A1 to A4 are also acquitted u/s 148 IPC and they are convicted only under Sections 447, 341 and 302 IPC.

19. In the result, the conviction and sentence imposed upon Appellants 5 and 7/A5 and A7 are set aside. They are acquitted of all the charges. Since A6 died pending appeal, the appeal against him is abated. The bail bond executed by A5 and A7 shall stand cancelled. The fine amount, if paid, shall be refunded to them. A1 to A4 are acquitted u/s 148 IPC and the conviction and sentence imposed upon them under Sections 447, 341 and 302 IPC are confirmed. Thus, the appeal is partly allowed.