Viswanathan and Another Vs State

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 7, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Penal Code, 1860 (IPC) â€" Section 302, 34

Citation: (2013) 1 MLJ(Cri) 516

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: V. Kathirvelu, for Sankar Ganesh, for the Appellant; K.S. Duraipandian, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

S. Nagamuthu, J.
The appellants are the accused 1 and 2 in S.C. No. 41 of 2009 on the file of the learned Additional Sessions Judge,

(Fast Track Court No. II) Trichy. They stood charged for the offence u/s 302 read with 34 IPC. By judgment, dated 23.9.2012, the trial Court

convicted them u/s 302 read with 34 IPC and sentenced them to undergo imprisonment and to pay a fine of Rs. 5,000/- each, in default, to

undergo imprisonment for one year. Challenging the said conviction and sentence, the appellants are before this Court with this appeal. The case of

the prosecution is as under:

A. 2 is the mother of A. 1. They are the residents of Sunnambukarampatti Village in Trichy District. The sister of the first accused was given in

marriage to the deceased Manaikandan. The said marriage was celebrated 10 to 11 years, prior to the occurrence. After the marriage, the

deceased had gone abroad for three years. They have got children also. While living in abroad, the deceased had left his wife and the children at

the house of the accused. During the said period, there arose misunderstanding between the deceased and his wife. Finally, the wife of the

deceased and their children once for all returned to the house of the accused and stayed with them. P.W. 1 is the brother-in-law of the deceased.

P.W. 2 is the wife of P.W. 1. P.W. 3 is a resident of Sunnambukarampatti Village. P.W. 4 and 5 are the either relatives or friends of the deceased

and they are also the residents of Sunnambukarampatti. P.W. 6 is the mother of the deceased.

2. It is alleged that on 16.10.2008, at about 10.00 a.m., the deceased Manikandan requested P.W. 1 over phone to amicably settle the

matrimonial dispute between him and his wife. Therefore, on the same day, at about 6.30 p.m. P.W. 1 went to the house of P.W. 6, who is the

mother of the deceased. When P.W. 1 enquired P.W. 6, about the deceased, P.W. 6 told her that he had gone to Pallakadu Village along with his

friends. Therefore, P.W. 1 went in search of him to Pallakadu Village. When P.W. 1 reached the place near a tea shop known as ""Malar Tea

Shop"", P.Ws. 3 to 5 who are the friends of the deceased were already standing.

3. At that time, the deceased came running towards from east to west. He was chased by the accused 1 and 2. The first accused cut him with

aruval on his head. The deceased fell down. Then, A. 1 indiscriminately cut him on his neck and A. 2 stabbed the deceased on his chest and

stomach. P.W. 1 and others raised alarm. Thereafter, the accused fled away from the scene of occurrence with weapons. P.W. 1 and others found

the deceased dead.

4. P.W. 1, immediately proceeded to Somarasampattai Police Station. P.W. 14, was the then Sub-Inspector of Police attached to the said

Somarasampattai Police Station P.W. 1 presented a written complaint under Exhibit P-1 at 10.00 p.m. Based on the same, P.W. 14 registered a

case in Crime No. 522 of 2008 u/s 302 IPC against both the accused. Exhibit P-16 is the First Information Report. He forwarded Exhibit P-1 and

Exhibit P-16 to the jurisdictional magistrate, which was received by the learned Judicial Magistrate at 4.00 a.m. on the next day. P.W. 14 handed

over the case diary to P.W. 15, the then Inspector of Police attached to Somraspattiah Police Station, who has taken up the case for further

investigation.

5. Taking up the case for further investigation, P.W. 15 proceeded to the place of occurrence, where, in the presence of P.W. 7 and another

witness, he prepared Exhibit P-2-Observation Mahazar. In the presence of the very same witnesses under Exhibit P-3, he recovered blood stained

earth and sample earth from the place of occurrence. Then, he arranged for photographs being taken at the place of occurrence. M.O. 5 series are

the photographs. The same was recorded in a compact disk, which was marked as M.O. 6. On 17.10.2008, between 00.30 and 2.30 a.m., P.W.

15 conducted inquest on the body of the deceased and prepared Exhibit P-8-inquest report. Then, he forwarded the dead body to the

Government Medical College Hospital, Trichy for post-mortem. P.W. 12-the then tutor of Forensic Medicine, attached to the Government

Viswanathan Hospital, Trichy, conducted autopsy on the body of the deceased at 11.00 a.m. on 17.10.2008 and during the post-mortem, she

found the following injuries:

Wounds:

1) An oblique cut wound 4 cm x 1 cm x bone deep, on the centre of occipital region of the scalp.

2) A vertical cut wound 5 cm x 1 cm x bone deep on the right frontal region of the scalp.

3) A vertical cut wound 5 cm x 1 cm x bone deep on the frontal region of the scalp 2 cm inner to the 2nd wound.

4) A transverse cut wound on the front of the neck, 12 cm x 7 cm x exposing the underlying structures. The muscles, blood vessels and nerves are

clean cut. Wine pipe food pipe are clean cut. Cut fracture of C2, C3 vertebrae present.

5) A transverse cut wound, 6 cm x 1 cm x bone deep on the centre of the chin.

6) An incised wound 2 cm x 0.5 cm x bone deep on the front of upper third of left leg.

7) An incised wound 3 cm x 1 cm x bone deep on the front of right knee.

An incised wound 2 cm x 1 cm x muscle deep on the side aspect of lower third of left arm.

9) 16 stab wound of varying dimensions at varying planes on the front of left side of chest and abdomen. On opening the chest: Cut fracture of 7 to

9 left side ribs. Inter costal muscles blood vessels and nerves are clean cut. Multiple stab wounds on the left lung. Left lung collapsed. On opening

the abdomen: Stab wound on the left lobe of liver 3 cm x 1 cm x 1 cm present. Stab wound on the Spleen 1.5 cm x 0.5 cm x 0.5 cm present.

10) Fracture separation of T11-T12 vertebral joint with laceration of underlying spinal cord present.

11) Bruising of omentum and mesentery-dark red.

12) An oblique cut wound 7 cm x 1 cm x bone deep on the left side of forehead.

13) A vertical cut wound 3 cm x 1 cm x bone deep on the left side of occipital region of scalp.

14) Bruising of frontal and occipital regions of scalp-Dark red. Fissured fracture of frontal and temporal bones present. Sub dural haemorrhage

and sub arachnoid haemorrhage on both cerebral hemisphere. Fracture base of skull-anterior and middle cranial fossae present.

The above mentioned wounds are ante mortem in nature. No other external, internal or bony wound present.

Finally, she opined that the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. Exhibit P-11 is the Post-mortem

Certificate and Exhibit P-12 is the viscera report. Exhibit P-13 is the serologist report and Exhibit P-14 is her final opinion.

6. Continuing the investigation, P.W. 15 examined few more witnesses. Finally, he arrested the first accused on 17.10.2008, at about 12.30 p.m.,

at Trichy Thogamalai Road, Pothavur Valai. On such arrest, the first accused gave a confession voluntarily, in which, he had disclosed the place,

where aruval had been hidden. On the same day, at 12.30 p.m., at the same place, P.W. 15 arrested the second accused in the presence of the

same witnesses. A. 2 also gave a voluntary confession, in which, she disclosed the place, where she had hidden the knife. Based on the said

confession (Exhibit P-4), the first accused took the police and witnesses to Pallakadu, Pudutheru Mariammal Kovil, and took out M.O. 1, aruval

from a bush and produced the same to P.W. 15. P.W. 15 recovered the same in the presence of witnesses under Exhibit P-6 at 3.30 p.m. Based

on Exhibit P-5 information, the second accused took the police to Pallakadu and from her house, she took out M.O. 2 knife (pitchuav) and

produced the same to P.W. 15. P.W. 15 recovered the same in the presence of witness under Exhibit P-7, Mahazar. P.W. 15 returned to the

police station along with the recovered articles and the accused. Then, he produced the accused before the Court and also forwarded the material

objects for chemical examination. P.W. 15 has further stated that when he arrested the accused 1 and 2, he found injures on the accused.

Therefore, he took them to the Government Hospital, Trichy for medical examination. Exhibits P-19 and 20 are the accident registers showing the

injuries of accused 1 and 2.

7. Continuing the investigation, P.W. 15 made a request to the Court for sending the material objects for chemical examination. The reports have

been received. Finally, on completing the investigation, P.W. 15 filed a final report against both the accused u/s 302 IPC read with 34 IPC.

8. Based on the above materials, the trial Court framed charges u/s 302 IPC read with 34 against the accused. In order to prove the charges, the

prosecution has examined as many as 15 witnesses and examined 23 documents. When the Trial Court examined the accused u/s 313 of the Code

of Criminal Procedure as to the incriminating evidences available against them, they denied the same as false. On their side, they have examined

three witnesses as D.Ws. 1 to 3 and they have marked four exhibits as D. 1 to D. 4.

9. Having considered the above materials, the trial Court found them guilty u/s 302 I.P.C. read with 34 as stated above and accordingly, sentenced

them. That is how, the appellants are before this Court with this appeal.

10. We have heard the learned senior counsel for the appellants and the learned Additional Public Prosecutor for the respondent. We have also

perused the records carefully.

11. As we have already stated, P.W. 1 to 6 claim to be the eyewitnesses to the occurrence. They have spoken to the facts relating to this

occurrence. As we have already stated, the prosecution relies on the eyewitness account of P.Ws. 1 to 6. It is not in dispute that P.Ws. 1 and 2

are close relatives of the deceased and others are, either friends or the distant relatives of the deceased. They all belong to Sunnambukarampatti

Village. The occurrence had taken place in Pallakadu village. The contention of the learned senior counsel for the appellants is that it is highly

unbelievable that all these six witnesses, who belonged to Sunnambukarampatti Village, would have been there at Pallakadu Village at the crucial

moment and therefore, according to him, the very presence of these witnesses at the place of occurrence is highly doubtful.

12. Nextly, the learned senior counsel for the appellants would submit that though admittedly there is a tea shop and lot of other houses near the

place of occurrence, no independent witness has been examined from that locality. Thus, according to him, this creates further doubts in the case of

prosecution. He would further submit that there are lot of contradictions in the evidences of the eyewitness in respect of the injuries sustained by

the deceased. P.W. 3 has turned hostile and has not supported the case of the prosecution. He would point out that P.Ws. 1 and 2 would say that

the first accused attacked the deceased with aruval, whereas, the second accused attacked the deceased with knife (pitchuva). He would further

point out that P.W. 4 has stated even in chief examination that it was the first accused who stabbed the deceased with knife (pitchuva), whereas, it

was the second accused, who attacked the deceased with aruval. He would also point out that this contradiction goes to the root of the case and

the same is fatal. He would further point out that P.W. 5, has stated that he saw the occurrence from a distance of half a kilometre. It is his

evidence that the other eyewitness were also standing with him. According to the learned counsel, from a distance of half a kilometre, during night

hours, it would not have been possible to witness the occurrence by P.W. 5 and the others who stood along with him. He would further point out

that the evidence of P.W. 6 cannot be believed, because even according to P.W. 1, she (P.W. 6) was at home, at the time of occurrence. He

would further submit that there was no need for her to come to the place of occurrence, that too, to a different village. Thus, the evidence of P.W.

6 is also doubtful.

13. Lastly, he would assail the First Information Report. According to him, the First Information Report would not have come into existence at

10.00 p.m. as projected by the prosecution. He would point out that according to P.W. 5, immediately after the occurrence, the police were

informed over phone about the occurrence and the police reached the place of occurrence within 15 minutes and they only removed the body of

the deceased within half an hour. In this regard, P.W. 1 has also stated so. From this, he would further point out that P.W. 1 during his cross-

examination, has stated that he remained at the place of occurrence till 2.00 a.m. From this, he would try to project that the First Information

Report would not have come into existence at 10.00 a.m. and the same would have come into existence after due deliberation, subsequent to the

arrival of the police. He would further point out that the deceased was fully drunk and the same has been spoken to by P.W. 1, which is also duly

corroborated by the medical evidence. He would further submit that the injuries sustained by A. 1 and A. 2 have not been explained by the

prosecution.

14. For all these reasons, the learned senior counsel would submit that the prosecution has failed to prove the case beyond all reasonable doubts

and therefore, the conviction and sentence imposed on the appellants are liable to be set aside.

15. The learned Additional Public Prosecutor would oppose this appeal. According to him, though it is true that no witness from that locality has

been examined, on that score, the entire case of the prosecution need not be discarded. He would further submit that the evidences of P.Ws. 1 to

6, though they are very closely related, cannot be rejected on that score alone. He would point out that the said evidences of P.Ws. 1 to 6 would

inspire the confidence of this Court. He would further point out that after the arrest of the accused and at their instance, M.Os. 1 and 2 have been

recovered. This duly corroborates the evidences of P.Ws. 1 to 6. He would further submit that the evidences of P.W. 1 and 4 that the police

arrived within 15 minutes to the place of occurrence is only an aberration and that cannot be a ground to hold that the First Information Report

would not have come into being at 10.00 a.m. The occurrence was at 8.30 p.m. and the complaint was registered at 10.00 p.m. and the First

Information Report reached to the Court at 4.00 a.m. Thus, there would have been no occasion for the prosecution to foist a false case and thus,

the possibility of deliberation stands ruled out. In conclusion, he would submit that the prosecution has proved the case beyond all reasonable

doubts and hence, the conviction and sentence imposed on the appellants are liable to be confirmed.

16. We have considered the submissions of the learned senior counsel for the appellants and also the learned Additional Public Prosecutor. We

have also carefully perused the records available.

17. Admittedly, P.W. 1 to 6 belong to Sunnambukarampatti, whereas, the occurrence had taken place in Pallakadu village. The presence of P.Ws.

1 to 6, at the place of occurrence, according to the learned senior counsel for the appellants is doubtful. In this argument, we find some force. In

the absence of examination by (sic) independent and natural witness from that locality, in our considered opinion, the evidences of P.Ws. 1 to 6

cannot be acted upon, unless they inspire the confidence of the Court. We are not to say that P.W. 1 to 6 are to be disbelieved, simply, because

they happened to be the close relatives. Because they happened to be the close relatives of the deceased and because their presence at the scene

of occurrence is by chance and since they have not spoken as to what made them to be present at the crucial moment at the place of occurrence,

we are to say that the presence of these witnesses is doubtful. Now, coming to occurrence place, it is not as though the occurrence had taken

place where there is no chance for the presence of any independent witness. Admittedly, the occurrence had taken place at 8.30 a.m. and

therefore, by all probabilities, there would have been a number of people present at the place of occurrence. The prosecution has not explained as

to why no independent witness, more particularly, from Pallakadu village, has been examined. This creates further doubts in the case of the

prosecution.

18. Now, coming to the individual overt acts, as we have already stated, P.W. 6 has not supported the case of the prosecution in any manner.

P.Ws. 1 and 2 have stated that A. 1 attacked the deceased with aruval and A. 2 attacked him with knife (pitchuva). However, P.W. 4 has

categorically stated even in the chief examination that it was the second accused who attacked the deceased with aruval, whereas, the first accused

attacked him with knife. This, in our considered opinion, is a major contradiction, for which, the prosecution has got no explanation. This also

creates further doubts in the case of the prosecution.

19. Now, coming to the lodging of the First Information Report, the alleged occurrence had taken place, according to the prosecution, at 8.30

p.m. It is their positive case that P.W. 1 proceeded to the police station and he made a complaint at 10.00 p.m. upon which, the present case was

registered. But, according to the evidences of P.Ws. 1 to 5, immediately after the occurrence, within 15 minutes, on an information passed on to

the police, over a cryptic telephonic message, the police reached the place and removed the dead body. This shows that the police had some other

information before Exhibit P-1. Therefore, Exhibit P-1 can not be the First Information. Assuming that over a cryptic telephonic message, the

police reached and removed the dead body within half an hour after occurrence, it goes without saying that the First Information Report would not

have come into existence as alleged by the prosecution and it would have come into existence only after the arrival of the police at the spot. Had it

been true that with a cryptic telephonic message, the police reached the place of occurrence within 15 minutes, nothing would have prevented the

police from recording the truth and to have placed the same before the Court below. This also creates doubt as to whether the First Information

Report would have come into existence as alleged by the prosecution.

20. Regarding the arrest and the consequential recovery of M.Os. 1 and 2, P.W. 6, the mother of the deceased, has categorically stated that on

the next day of the occurrence at 10.00 a.m., she along with the other witnesses went to the police station, as they were asked to come and

identify the weapons used in the crime. Accordingly, M.Os. 1 and 2 were identified by them at the police station. This would go to show that the

accused would not have been arrested at the time and the place as has been projected by the prosecution and the weapons also would not have

been recovered at the instance of the accused. This also creates doubt in the case of the prosecution. Above all, A. 2 is a woman. In our

considered view, it is somewhat unbelievable that an aged woman, would have chased the deceased to such a long distance and stabbed him, that

too, in a very busy locality.

21. Lastly, we have to see that the deceased was living separately and his wife was at the house of the deceased. There was no prior arrangement

to make an attempt for a compromise. If that be so, it is highly unbelievable that P.W. 1 would have gone to the house of the deceased for the

purpose of effecting any compromise.

22. In view of the above improbabilities and inconsistencies in the case of the prosecution, we are of the view that it is not safe to place implicit

reliance on the evidences of P.W. 1 to 6 so as to convict the appellants. We hold that the prosecution has failed to prove the case beyond all

reasonable doubts. Therefore, the conviction and sentence imposed by the trial Court on the appellants is liable to be set aside. In the result, this

criminal appeal is allowed; the conviction and sentence imposed on the appellants is set aside and the appellants are acquitted of all the charges.

The appellants are directed to be released forthwith, unless their presence is required in connection with any other case or proceedings. Fine

amount, if any, paid by them shall be repaid to them. Consequently, the connected miscellaneous petitions are also closed. No costs.