
Suresh Kumar and Others Vs State of Tamil Nadu

Criminal Appeal No. 628 of 1999

Court: Madras High Court

Date of Decision: July 19, 2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) & Section 313#Penal Code, 1860 (IPC) & Section 109, 302, 307

Citation: (2006) CriLJ 1056

Hon'ble Judges: S. Sardar Zackria Hussain, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: L. Mahendran, for the Appellant; E. Raja, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Karpagavinayagam, J.

A. 1 to A. 3 are the appellants herein. Suresh Kumar alias Suresh, who is arrayed as A.I, Mohammed Ali alias

Monu alias Jambu, who is arrayed as A. 2 and Narayanamoorthy alias Wins Moorthy, who is arrayed as A.3, have been convicted by the trial

Court for the offence punishable u/s 302 r/w Section 109, I.P.C. and sentenced to undergo imprisonment for life. Challenging the same, this appeal

has been preferred.

2. The short facts leading to the filing of the appeal are as follows :

(a) The deceased-Ramalingam, P.W. 1 Appavoo, P.W, 2 Murugesan, are the friends of A.1 to A.8 are the residents of Kempatti Colony at

Coimbatore. On 14-9-1997 at about 10 p.m. P.Ws. 1 and 2 along with the deceased went to Mahalakshmi Bakery to take tea. When they

reached Mahalakshmi Bakery by travelling in a TVS moped, all the three accused, who were standing near Mahalakshmi Bakery, called them.

P.W. 1 left the moped nearby and all of them went near the accused. A.3, Wins Moorthy questioned the deceased as to why he was spoiling the

women folk in the area. The deceased reacted by stating that he would continue to do it and no one can challenge him. Thereafter, A.3 caught

hold of the right hand of the deceased, A.2 caught, hold of the left hand of the deceased and A.3 instigated A. 1 to stab the deceased. Thereupon,

A.1 took out a button knife from his pocket and stabbed the deceased on the left side of his chest, as a result of which the deceased fell on the

ground. Thereafter, all the accused ran away from the scene of occurrence.

(b) On noticing the deceased falling down on the ground and gasping for life with bleeding injuries, P.Ws. 1 and 2 rushed to the house of the

deceased, which is situated nearby, and informed about the incident to P.W. 3 Arumugara, who is the brother of the deceased. Then, P.W. 3,

along with P.Ws. 1 and 2 came to the scene of occurrence and arranged for an auto in which the deceased was taken to the hospital. As

requested by P.W. 3. P.W. J went to the Police Station and lodged Ex. P. 1 complaint at 10.30 p.m. The complaint was registered by P.W. 12,

the Sub-Inspector of Police in Crime No. 1590 of 1997 for the offence punishable u/s 307, I.P.C.

(c) In the meantime, the deceased was taken to the Government Hospital, Coimbatore at 10.20 p.m. P.W. 5 doctor admitted him and issued Ex.

P. 5 accident register. Then P.W. 7 doctor who is attached to the Cardiothoracic Surgical Wing at Coimbatore Government Hospital conducted a

surgery on the deceased. Ex. P. 7 is the medical case sheet.

(d) In the meantime, Ex. P. 6 intimation was sent to the Police. P.W. 13, the Inspector of Police took up further investigation.

He went to the scene of occurrence at 11.30 p.m., observed all the formalities and prepared observation mahazhar, rough sketch and also seized

the blood-stained samples,

(e) On the next day early morning, at 2.30 a.m., the deceased succumbed to the injuries and his death was intimated to the police under Ex. P.8

death intimation. After receipt of Ex. P.8, P.W. 13 altered the offence into one u/s 302, I.P.C. and sent an alteration report to the Court. P.W. 13,

at 7.00 a.m., went to the hospital and conducted inquest. During inquest, P.W's 1 to 3 were examined. Then, a requisition was sent to the Doctor

to conduct post-mortem. P.W. 8, the doctor attached to the Coimbatore Government Hospital conducted autopsy on the body of the deceased,

on 15-9-1997 and found an injury on the chest. On completion of the autopsy, he gave a post-mortem certificate opining that the deceased would

appear to have died of shock and haemorrhage as a result of the stab injury sustained by him.

(f) Then, on information, P.W. 13, on 15-9-1997 at 2.00 p.m. arrested A. 1 to A.3 near Ukkadam Perur Bypass Road. On the confession of A.1,

M.O.1 was recovered; on the confession of A.2, M.O. 7, a blood-stained shirt worn by A.2 was seized; and on the confession of A.3, M.O.8

was seized. Thereafter, all the material objects were sent for chemical analysis. After completion of investigation, P.W. 13 filed a charge-sheet

against all the accused for the offence punishable u/s 302 r/w Section 109, I.P.C.

(g) During the course of trial, on the side of the prosecution, 13 witnesses were examined, 27 exhibits were filed and 9 material objects were

marked.

(h) The accused, while being questioned u/s 313, Cr. P.C. with reference to the incriminating materials, denied their complicity in the crime.

(i) The trial Court, after having considered the evidence placed on record, concluded that A. 1 is liable to be convicted u/s 302, I.P.C. and A.2

and A.3 are liable to be convicted u/s 302 r/w Section 109, I.P.C. and accordingly, it found them guilty of the said offence and sentenced

thereunder. Hence this appeal.

3. Mr. L. Mahendran, learned counsel for the appellants, would take us through the entire evidence and would contend that the testimony of P.Ws.

1 and 2 cannot be relied upon as they could not have seen the occurrence and their conduct is quite artificial and their deposition before the Court

is quite contradictory to the evidence of P.W. 3 and other records. Therefore, the conviction, on the basis of the evidence of P.Ws. 1 and 2, the

eye-witnesses, cannot be held to be valid.

4. We have heard the learned Additional Public Prosecutor on these aspects.

5. We have given our anxious consideration to the rival contentions made by either side and perused the entire records.

6. According to the prosecution, on 14-9-1997 at about 10 p.m., when the deceased along with P.Ws. 1 and 2 went to Mahalakshmi Bakery to

take tea, they were called by all the three accused and thereafter, there was a quarrel between them. Suddenly, A.1 and A.2 caught hold of the

deceased and A. 1 stabbed the deceased on his chest using M.O.I knife. Then, P.Ws. 1 and 2 rushed to the house of the deceased and informed

about the incident to P.W. 3, who came to the scene of occurrence and made arrangement to take the deceased to the hospital, P.W. 1 was

asked to give a complaint and accordingly, he went to the Police Station and gave Ex. P. 1 complaint. P.W. 5, doctor admitted the deceased in the

hospital and gave initial treatment. P.W. 7 doctor conducted a surgery on the deceased, but despite the treatment, the deceased died the next

morning.

7. To prove the occurrence, the prosecution has cited two witnesses, viz., P.Ws. 1 and 2. According to the prosecution, P.Ws. 1 and 2 are the

close friends of the deceased. It is the case of P.Ws. 1 and 2 that immediately after the occurrence, they informed the incident to P.W. 3, the

brother of the deceased and the deceased, who was gasping for life was taken to the hospital without any delay. The complaint which has been

given by P.W. 1 was registered by P.W. 12 at about 10.30 p.m. It has been specifically stated that P.Ws. 1 and 2 saw the occurrence and when

the deceased fell down with the bleeding injuries in front of Mahalakshmi Bakery, they rushed to the house of the deceased and informed the same

to P.W. 3, who made arrangements to take the deceased to the hospital.

8. A reading of Ex. P. 1 complaint given by P.W. 1 and the evidence of P.Ws. 1 and 2 would make it clear that immediately after the occurrence,

P.Ws. 1 and 2 went to the house of the deceased to inform the details of the assailants to P.W. 3. Only thereafter, P.W. 3 took the deceased to

the hospital. These details have been given in the inquest report which has been prepared on the next day morning by P.W. 13, the Inspector of

Police. But, unfortunately, this version has not been supported by P.W. 3 either in his statement to the doctor or to the police or at least in the

Court. Ex. P. 5 is the earliest document. P.W. 5 is the author of the document. P.W. 5 is the doctor who admitted the deceased in the hospital at

10.20 p.m. and issued Ex. P.5 accident register. The contents of Ex. P.5 are that one Murugesan (P.W. 2) informed P.W. 3. Arumugam, who is

the brother of the deceased, that the deceased was found lying in front of Mahalakshmi Bakery at about 10.15 p.m. and that he brought the

deceased to the hospital for treatment. The relevant portion of the statement is mentioned as follows :--

(Vernacular matter omittedEd.)

Immediately, P.W. 5 sent Ex. P.6 intimation to the Police. The same was given as follows :--

(Vernacular matter omitted.. .Ed.)

9. So, when P.W. 5 was examined, he would also state that an information was given to him by the brother of the deceased that he was informed

by Murugesan (P.W. 2) about the fact that the deceased was found lying in front of Mahalakshmi Bakery. When this was confronted with P.W. 3

in the cross-examination, he would also admit that such a statement was given by him to the doctor. Thus, it is clear that P.W. 2 never informed as

to the details of the assailants. As a matter of fact, P.W. 3 has not given any statement either to the doctor or before the Court that he came to

know from P.Ws. 1 and 2 that A. 1 to A.3 participated in the attack which resulted in the injuries to the deceased. Apart from that, Ex. P.7 is the

case sheet, which has been spoken to by P.W. 6. In the case sheet also, the very same reference has been made, which is as follows :--

Patient alleged to have been stabbed with knife by unknown person in Karuppa Gr. Street, CBE at 9.30 p.m. in CBE on 14-9-1997. Patient is

unconscious.

10. So, these documents viz., Exs. P.5 to P.7 which have been referred to by P.Ws. 5 and 6 would indicate that the earliest statement given by

Arumugam, P.W. 3, who accompanied the deceased to the doctor was to the effect that P.Ws. 1 and 2 who are the close friends of the deceased

have not informed anything about the identity of the assailant. On the other hand, the FIR which has been given by P.W. 1 at about 10.30 p.m.

which reached the Magistrate would contain all the name of the assailants. If the contents of Ex. P.I are true, there is no reason as to why P.W. 3

did not choose to give the details to the doctor or the Police when he was examined. Further, the conduct of P.Ws. 1 and 2 immediately after the

attack is also quite artificial. There is no dispute as to the fact that P.Ws. 1 and 2 are very close friends of the deceased. It is the case of the

prosecution that all the accused had a grudge against P.Ws. 1 and 2 and the deceased, thinking that they were spoiling the women folk in the area.

If it is so, the accused would have also made an attempt to attack P.Ws. 1 and 2 also when they attacked the deceased. On the other hand, they

attacked the deceased alone and ran away from the scene of occurrence.

11. Having seen the deceased gasping for life after having been attacked brutally, it is quite un-understandable as to why P.Ws. 1 and 2 did not

take any steps to save the deceased, who was alive, by taking him to the hospital, that too when the occurrence had taken place in a city. On the

other hand, it is the case of the prosecution that P.Ws. 1 and 2 rushed to the house of the deceased and informed about the incident to the brother

of the deceased. Admittedly, P.W. 2 did not choose to accompany P.W. 1 to the police station or accompany P.W. 3 to the hospital.

12. Further, as admitted by the Investigating Officer, they were not able to collect any material with regard to the motive aspect. Under these

circumstances, we are not able to place any reliance on the evidence of P.Ws. 1 and 2 in the light of the fact that their testimony is completely

contrary to the testimony of P.Ws. 3, 5 and 6 and in the light of the earlier documents, viz., Exs. P.5 to P.7. Therefore, we are of the view that all

the accused are entitled to be given the benefit of doubt and they are accordingly given the same. Consequently, all the accused are acquitted. The

appeal is allowed. The conviction and sentence of the trial Court is set aside. The bail bonds, if any, executed by the appellants shall stand

cancelled.