

(2006) 03 MAD CK 0179

Madras High Court

Case No: Criminal Appeal No. 1378 of 2002 and 163 of 2003

Logu alias Loganathan,
Sivakumar and K. Devendran

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 9, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: M. Karpagavinayagam, J; AR. Ramalingam, J

Bench: Division Bench

Advocate: D. Shivakumaran, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Karpagavinayagam, J.

Loganathan (A-1), Devendran (A-2) and Sivakumar (A-3)/ appellants herein were tried and convicted for the offence u/s 302 read with 34 IPC. Challenging the same, these two separate appeals have been filed.

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

(i) Muthusamy, deceased, belongs to the group of one Ramesh. Accused belong to the other group, headed by Sivakumar (A-3). There was a grudge for the accused against the deceased, since the deceased used to give information about the accused to one Ramesh, who is the leader of his group.

(ii) In the light of the above said enmity, the occurrence took place on 20.12.1999 at about 10.15 p.m. The deceased was coming on the road, proceeding to his house. At that time, A-1 to A-3, who hid themselves near a fence, appeared at the scene and gave indiscriminate cuts on the body of the deceased with a veecheruval and knives,

as a result of which the deceased died on the spot.

(iii) The occurrence was witnessed by P.W.1, father of the deceased, and P.Ws.2 and 3, who belong to the same village.

(iv) P.W.7, V.A.O., on coming to know that the dead body was lying near Vembankattuvalavu village, visited the spot, went to the police station and gave a complaint on 21.12.1999 at about 11.00 a.m. to P.W.12, Inspector of Police, stating that somebody murdered the deceased. The said complaint was registered by P.W.11, Sub-Inspector of Police for the offence u/s 302 IPC.

(v) P.W.12, Inspector of Police, took up investigation, came to the scene of occurrence and prepared observation mahazar Ex.P-9, and rough sketch, Ex.P-18. He recovered blood stained earth, sample earth and other materials, found at the scene, and also conducted inquest. During the inquest, he examined P.Ws.1 to 3, eye witnesses, and P.Ws.4 and 7. Thereafter, he sent the dead body for post-mortem.

(vi) P.W.5 doctor, conducted post-mortem; found 14 injuries on the body of the deceased and issued post-mortem certificate Ex.P-2. He gave his opinion that the deceased died of shock and haemorrhage due to multiple stab and cut injuries.

(vii) P.W.12, Inspector of Police, took steps to search for the accused. Ultimately, on 27.12.1999, he arrested A-2 and A-3. On their confession, two veecheruvals, namely, M.Os.1 and 2, were recovered. On coming to know that A-1 surrendered before the Court concerned on 10.01.2000, he obtained police custody of A-1 and, on the confession of A-1, recovered M.O.3, knife. Thereafter, he sent the material objects for chemical examination.

(viii) Since P.W.12, investigating officer, was transferred, P.W.13, the successor investigating officer, took up further investigation. After completion of investigation, he filed charge sheet against the accused for the offence u/s 302 read with 34 IPC.

(ix) During the course of trial, P.Ws.1 to 13 were examined; Exs.P-1 to 19 were filed and M.Os.1 to 13 were marked.

(x) When the accused were questioned u/s 313 Cr.P.C. with regard to the incriminating materials, they denied their complicity in the crime in question. However, no evidence was adduced on the side of defence.

(xi) The trial Court, after going through the materials available on record, concluded that the prosecution had established its case against the accused beyond reasonable doubt. Hence, this appeal.

3. We have heard Mr. D. Shivakumaran, learned counsel for the appellants, and Mr. E. Raja, learned Additional Public Prosecutor.

4. Entire case of the prosecution is based on the deposition of P.Ws.1 to 3.

5. According to P.W.1, when he went to the scene of occurrence in search of the deceased, he saw the deceased being attacked by all the three accused with dangerous weapons. P.Ws.2 and 3 also would state, that on their way back home, they saw the occurrence. But, strangely, they did not choose to give any complaint to the police or to inform any other relatives.

6. On the other hand, P.W.7, Village Administrative Officer, on coming to know that the dead body of the deceased was lying near Vembankattuvalavu village, went to the scene on 21.12.1999 at about 10.00 a.m. and enquired the relatives of the deceased and also the villagers about the culprits, but he was not informed anything about the occurrence. Therefore, he went to the police station at about 11.00 a.m. and gave a complaint, stating that somebody murdered the deceased in the earlier night. On that basis, a case was registered.

7. P.W.12, Inspector of Police, took up investigation, went to the scene of offence, and conducted inquest in the presence of panchayatdars. Only during the inquest, which was held between 01.45 p.m. and 04.00 p.m, P.Ws.1 to 3 gave statements, stating that they saw the occurrence, in which the deceased was done to death by the accused 1 to 3.

8. As a matter of fact, the evidence of P.W.1 would make it clear that he was categorical in his statement that as soon as the occurrence was over, he informed his wife about the occurrence and since his wife got fainted, he went to hospital to afford treatment to her and, thereafter, he went to the police station at 04.30 a.m on 21.12.1999 and gave a complaint in the police station.

9. On the other hand, P.Ws.2 and 3 would state that even though they did not try to prevent the attack made by the accused on the deceased, since they were afraid, they did not choose to inform the villagers or the relatives of the deceased till they were examined by the police during the course of inquest. In fact, P.Ws.2 and 3 would state that they came to the scene next day morning at 06.00 a.m. and saw the dead body. According to P.W.7, at that time, he came and enquired the villagers and he was not able to get any clue about the culprits from any of the villagers.

10. As indicated above, the complaint was lodged by P.W.7 only at 11.00 a.m. Thus, it is clear that both police and P.W.7 were not able to get any particulars about the culprits, who attacked the deceased.

11. Under those circumstances, we are not able to place any reliance on P.Ws.1 to 3, who have not chosen to inform the police or the villagers about the accused, who were said to have participated in the crime of murder. If we believe the evidence of P.W.7, V.A.O., who gave the complaint, and P.W.11, Sub-Inspector of Police, who received the complaint and registered the case, it is clear that eye witnesses have not chosen to inform the V.A.O. or the police about the occurrence immediately. On the other hand, the evidence of P.W.1 would indicate that he gave a complaint at 04.30 a.m in the early morning in the police station, which cannot be true. Further,

the evidence of P.Ws.1 to 3 would clearly reveal that their account relating to the occurrence is quite artificial and unbelievable, especially when there is no electric light burning near the place of occurrence and also when their conduct in not informing either to police or to others with reference to the attack made on the deceased by the accused would clearly show that P.Ws.1 to 3 would not have witnessed the occurrence. Therefore, in our view, all the three accused/appellants are entitled to be given the benefit of doubt.

12. Accordingly, the appeals are allowed. The conviction and sentence imposed on the accused/appellants by the trial Court is set aside. The bail bonds, executed by them, shall stand cancelled. Fine, if any paid, shall be refunded.