

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.No.680 of 2013

1.Sampath, S/o.Chellaiyan
2.Anbu @ Anbalagan, S/o.Muthusamy ... Appellants/A1 & A2

Versus

State rep by
The Inspector of Police
Paravakottai Police Station
Thiruvarur District. ... Respondent/Complainant

Appeal filed under section 374 Cr.P.C., against the
Judgment passed by the learned Sessions Judge, Thiruvarur, in
SC.No.9/2009 dated 31.08.2009.

For Appellants : Mr.N.Anandakumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellants are arrayed as A1 and A2 in SC.No.9/2009 on the file of the Sessions Judge, Thiruvarur, and they were charged, tried and convicted for the offence u/s.302 read with 34 IPC and were imposed with sentence of rigorous imprisonment for life and to pay a fine of Rs.50,000/- each, with a default sentence of three years rigorous imprisonment. Challenging the said conviction and sentence, they have filed the present appeal.

2. The facts leading to the filing of this appeal, briefly narrated, are as follows:-

[A] One Rajendran [since deceased] was residing at Colony Street, Pynganadu, Tiruvarur District and opposite to his house,

a water tap is situated. So also the house of the A1. The mother of A1 is one Pappathi. It is an usual habit of A1 to draw water from the tap ; but will not close it and as a result, the water would stagnate in front of the house of Rajendran. In this regard, Rajendran has asked A1 as well as his father, Chellaiyan, not to do so and as a result of which, misunderstanding developed between the family of A1 and Rajendran. A2 [Anbu @ Anbalagan] is a close relative of A1.

[B] On 25.08.2007, the mother of A1, after drawing water, did not close the tap. Once again, Rajendran has questioned the same. Therefore, both the accused got enraged by the same and decided to do away with the life of Rajendran. Accordingly, at about 17.30 hours, on the same day, i.e., on 25.08.2007, both the accused, armed with knives, waylaid the deceased Rajendran and A2 put his lungi on the neck of Rajendran and pulled him and thereafter, both the accused repeatedly stabbed Rajendran with the knives and as a consequence, Rajendran died on the spot.

[C] P.W.1 [Karunanidhi] is the elder brother of the deceased Rajendran and he knows the accused very well and also the dispute between the family of A1 and his younger brother, Rajendran. On 25.08.2007 afternoon, there was a wordy altercation between the accused and Rajendran. At about 17.30 hours, on that date, P.W.1 went to the tea shop of P.W.2 [Seth @ Murugesan] to have tea and his younger brother Rajendran came there, in search of him. About 10 feet away from the tea shop of P.W.2, A2 by putting his lungi on the neck of Rajendran, pulled him and A1 with the knife he was holding, repeatedly stabbed Rajendran on the stomach and on the right side of the neck and thereafter, the deceased fell down and subsequently, A2 stabbed the deceased on his back and stomach. Accused, on seeing P.Ws.1 and 2 and others, ran away from the scene of crime. When P.W.1 and others went near Rajendran, they found him dead.

[D] P.W.1 proceeded to Paravakkottai Police Station and lodged a complaint at about 19.00 hours on 25.08.2007 to P.W.7 [Thavasamy], the then Sub Inspector of Police attached to the said Police Station. The complaint was marked as Ex.P.1. The contents of the complaint were given by P.W.1 and it was reduced to writing by P.W.7 and thereafter, P.W.7 got the signature of P.W.1 in Ex.P.1. Based on Ex.P.1 [complaint], a case in Cr.No.101/2007 came to be registered for the offence u/s.302 IPC at 19.30 hours on 25.08.2007. The printed First Information Report was marked as Ex.P.6. He despatched the original complaint [Ex.P.1] and the printed FIR [Ex.P.6] to the Court of the Judicial Magistrate No.2, Mannargudi and forwarded the copies to the higher officials.

[E] P.W.10 [Kamaraj], who was the then Inspector of Police [In-charge], attached to Paravakkottai Police Station, on receipt of the FIR, commenced investigation. He went to the scene of crime at about 20.45 hours on 25.08.2007 and in the presence of P.W.3 [Kalaiselvan] and one Jagadeesan, prepared the Observation Mahazar, marked as Ex.P.2 and a Rough Sketch marked as Ex.P.9. He also recovered blood-stained earth [M.O.3] and sample earth [M.O.4] under the cover of Mahazar, Ex.P.3. P.W.10 also summoned the services of P.W.4 [Kathamuthu], who took photographs and were marked as Ex.P.5 series and the negatives were marked as Ex.P.6 series. At about 21.30 hours on the same day, P.W.10 conducted inquest on the dead body of the deceased in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.10]. Through P.W.9 [Paramasivam], Head Constable, he made a requisition for conducting postmortem on the body of the deceased, after having obtained necessary permission from the jurisdictional Magistrate.

[F] P.W.8-Dr.Senguttuvan, who was the Senior Civil Surgeon attached to the Government Hospital, Mannargudi, at the relevant point of time, on receipt of the body of the deceased viz., Rajendran, has commenced the postmortem at about 11.20 hours on 26.08.2007 and noted the following features:-

"Identification and Caste marks:-

[1]A scar on the cheek.

[2]A black mole over right hand.

The body was first seen by the undersigned at 11.20 a.m., on 26.08.2007. Its condition then was rigor mortis present in both upper and lower limbs, neck absent. Postmortem commenced at 11.20 a.m. on 26.08.2007.

Appearance found at the postmortem:- A body of a male aged 43, moderately nourished. Clothing stained with blood.

External Injuries:-

[1] 3 cm x 11/2 cm oblique director-wound retracted depth entering into thoracic cavity > 5 cm. Edges stained and mixed with Blood.

[2] Elliptical shape 3cmx1cmx4cm-wound retracted.

[3] 3cmx1cm depth entering into abdominal cavity.

[4] Elliptical shape 3cmx11/2cmx4cm - bleeding

[5] [2" below] 3cmx1cmx2cm elliptical shape everted.

[6] 2 ½ cm x 1 cm depth in the middle of the back side near right side of the spine.

[7] Vertical direction 3 ½ cm x 1 ½ cm x 4 cm Elliptical shape. Bleeding + Everted.

[8] 2 ½ cm x 1 cm x 3 cm Elliptical shape edges of all the wounds regular.

[9] Vertical Direction 2 ½ cm x 1 cm entering into thoracic cavity depth > 3 cms. Elliptical shape.

[10] 2 ½ cm x 1 cm x 3 cm elliptical shape-wound everted. Tip of all the injuries are opening. All wound surrounded with echymosis and stained with blood. Sub cutaneous vessels clot+ hyoid bone intact. Heart: normal. Lungs: Rt. Upper lobe injury ½ x ½ x ½ cm. Congested and bleeding+ Rib correspond to injury [10] at base-injury. ½ x ½ x ½ cm present. Skull normal. Brain-pale. Visceral organs-pale. Normal."

On completion of postmortem, P.W.8 has opined that the time of death was between 12.00 and 24.00 hours prior to autopsy and the cause of death was due to "shock and hemorrhage due to multiple injuries." The Postmortem Certificate given by P.W.8 was marked as Ex.P.7.

[G] P.W.10, the Inspector of Police, continuing the investigation, examined P.Ws.1, 2 and five other witnesses and recorded their statements. After completion of the postmortem, the clothes worn by the deceased were collected by P.W.9 under a Special Report, which was marked as Ex.P.8 and the materials so collected, were marked as M.Os. 7 to 10 [blood stained 'T' shirt, lungi, Dhoti and an inner wear]. On 26.08.2007, he examined the Head Constables Kumarasamy and Venkatachalam, and recorded their statements. Having come to know that the accused have surrendered before the Court of Judicial Magistrate, Orathanaadu, on 27.08.2007, he took steps to their custody and accordingly, the custody of the accused was taken on 04.09.2007. On the same day, at about 16.30 hours, P.W.10 interrogated both the accused. Both the accused came forward to give confession statements, which were recorded in the presence of P.Ws.5 and 6 [Nagarajan [VAO] and Shanmuganathan [Village Assistant]]. The admissible portion of the confession given by A1 was marked as Ex.P.4 and in pursuance of the same, two knives [M.Os.1 and 2], were recovered and seized under the cover of Mahazar [Ex.P.5]. The accused were sent for judicial custody. On 08.09.2007, P.W.10 examined P.W.8, the doctor who conducted autopsy on the dead body of the deceased and forwarded the material objects for chemical analysis, after obtaining necessary permission from the jurisdictional Magistrate Court. On getting the Certificates, viz., Ex.Ps.11 and 12 [Chemical Analysis Report and Serology

Report] and on completing the investigation, P.W.10 filed the final report on 13.09.2007, filed charging the appellants/A1 & A2, for the commission of the offence u/s.302 read with 34 IPC to the Court of the Judicial Magistrate, No.2, Mannargudi.

[H] On receipt of the final report, the learned Judicial Magistrate, No.2, Mannargudi, took it on file in PRC No.15/2008. The Committal Court, had summoned the appellants/accused and on their appearance, furnished copies of the documents under section 207 Cr.P.C., and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the learned Sessions Judge, Thiruvarur, who took it on file in SC.No.09/2009. The Trial Court, on appearance of the appellants/accused, framed charge u/s.302 read with 34 IPC and questioned the appellants/accused, who pleaded not guilty to the charge framed against them.

[I] The prosecution, in order to sustain their case, has examined P.Ws.1 to 10 and marked Exs.P.1 to 12 and also marked M.Os.1 to 10. The appellants/accused were questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances made out against them in the evidence rendered by the prosecution. They denied it as false. They further stated that they are not guilty of the offence. On behalf of the appellants/accused, no oral evidence was let in and no documents were marked.

3. The Trial Court on consideration of the oral and documentary evidence and other materials placed before it, has convicted the appellants/accused for the offence u/s.302 read with 34 IPC and sentenced them as mentioned above. Challenging the legality of the said conviction and sentence, the appellants/accused is before this Court with this appeal.

4. The learned Counsel appearing for the appellants/accused made the following submissions:-

[i] Though the occurrence took place in a busy locality, no independent witnesses were examined and except the interested testimonies of P.Ws.1 and 2, no independent witnesses were examined and no explanation has been offered by the Investigating Officer [P.W.10] as to the non-examination of the independent witness.

[ii] The FIR came to be belatedly registered at about 19.30 hours on 25.08.2007, though the occurrence is said to have been taken place at about 17.30 hours.

[iii] The motive for the commission of the occurrence pleaded by the prosecution was very flimsy and not believable and the blood stained clothes were not seized to prove the presence of the witnesses. Alternately, it is submitted by the

learned counsel for the appellants/A1 and A2 that even as per the version of the prosecution, there was an altercation between A1 and the deceased Rajendran on 25.08.2007 afternoon and the occurrence is said to have been taken place at about 17.30 hours on the same day and there was a sustained provocation and hence, prays for alteration of the conviction and sentence.

5. Per contra, the learned Additional Public Prosecutor would contend that the testimonies of the eyewitnesses, viz., P.Ws.1 and 2, corroborate with each other on all material particulars. P.W.2-an independent witness, has fully supported the case of the prosecution. Further, it is contended by him that as per the admissible portion of the confession of A1, knives were recovered and were subjected to chemical analysis and as per Exs.P.11 and 12, blood was detected and all the material objects were tainted with human blood and the Postmortem report, marked as Ex.P.7, coupled with the evidence of P.W.8, would amply establish that the deceased had died on homicidal violence and the Trial Court, on a careful scrutiny and appreciation of the entire materials, had rightly reached the conclusion to convict and sentence the appellants/accused and prays for dismissal of this appeal.

6. This Court paid its best attention to the rival submissions and also perused the oral and documentary evidences and other materials placed before it including the original records.

7. The question arises for consideration is whether the conviction recorded by the trial court against the appellants/accused for the commission of the offence u/s.302 r/w 34 IPC and sentencing them to undergo imprisonment for life and fine of Rs.50000/- each, with default sentence of three years rigorous imprisonment, is sustainable.

8. The motive for the commission of the offence, according to the prosecution, is that the water tap which is located on the opposite side to the house of the deceased Rajendran, was used by the mother of A1 for drawing water and it was not closed afterwards, which resulted in stagnation of water in front of the house of the deceased and though repeatedly the deceased pointed out the same to A1, he did not heed to the same and as a consequence, enmity has developed between the deceased Rajendran and A1.

9. The motive aspect has been clearly spoken to by P.Ws.1 and 2. P.W.1 is the elder brother of the deceased Rajendran and according to him, at about 17.30 hours on 25.08.2007, he went to the tea shop of P.W.2 to have tea and his younger brother

[Rajendran], who was searching for him, came there and about 10 feet away from the shop, Rajendran was waylaid by both the accused and A2, putting his lungi around the neck of his younger brother, pulled him and thereafter, A1 stabbed Rajendran repeatedly and the deceased has fallen down and thereafter, A2 had also stabbed him. P.W.2, an independent eyewitness to the occurrence, would depose that after putting lungi on the neck of the deceased Rajendran, A2 pulled him and A1 repeatedly stabbed the deceased and subsequently, both the accused repeatedly stabbed the deceased. In the cross-examination, P.W.1 would depose that his younger brother suspected the fidelity of his wife and attempted to murder his wife by pouring hot water on her and a case was also registered and as regards the occurrence, he would depose that the occurrence took place about 10 feet away from the shop of P.W.2 and it had taken place for about five minutes and immediately thereafter, he went to the Police Station and lodged a complaint. In the cross-examination done on behalf of both the accused, nothing useful was elicited in their favour. The accused were arrested on 04.09.2007 in the presence of P.W.5 and in pursuant of the admissible portion of the confession statement, two knives were recovered under the cover of Mahazar [Ex.P.5]. The material objects were subjected to chemical analysis and as per Exs.P.11 and 12, they were tainted with human blood. The doctor, [P.W.8] who conducted autopsy and who issued Ex.P.7 [Postmortem Certificate], had opined that the deceased died due to shock and hemorrhage due to multiple injuries and in the chief examination, P.W.8 would depose that the injuries would have been caused by the use of M.Os.1 and 2.

10. The occurrence in this case, took place at about 17.30 hours on 25.08.2007 and Ex.P.1 [complaint] was given by P.W.1 at about 19.30 hours and it was received by the jurisdictional Magistrate at about 23.30 hours on the same day, without any loss of time. When the accused were questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances, they denied the same.

11. It is a trite law that the testimony of the interested witness can also be taken into consideration, for the purpose of appreciating the evidence and that apart, the evidence of an independent witness, viz., P.W.2, has corroborated the evidence of P.W.1 on all material particulars.

12. The Trial Court, on a proper consideration and appreciation of the oral and documentary evidence, had rightly reached the conclusion on guilt and accordingly, sentenced the appellants/A1 and A2.

13. This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there is no infirmity or error apparent in the findings reached by the Trial Court and this Court finds no merit in the appeal.

14. In fine, the criminal appeal is dismissed and the conviction and sentence imposed on the appellants/A1 and A2, for the offence u/s.302 read with 34 IPC vide Judgment dated 31.08.2009 made in SC.No.9/2009 by the learned Sessions Judge, Thiruvavarur, are hereby confirmed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Sessions Judge,
Thiruvavarur.
2. The Judicial Magistrate No.2,
Mannargudi.
3. The Chief Judicial Magistrate,
Mannargudi.
(For Information)
4. The Inspector of Police
Paravakkottai Police Station
Thiruvavarur District.
5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.A.Mohamed Ismail, Advocate, S.R.No.18166

Cr1.A.No.680 of 2013

CTK(CO)
CA(05/04/2016)