

Kaliamoorthy Vs. State

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Court : Chennai

Decided On : Aug-30-2013

Judge : S.Rajeswaran

Appellant : Kaliamoorthy

Respondent : State

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 30.08.2013 CORAM THE HONOURABLE MR.JUSTICE S.RAJESWARAN AND THE HONOURABLE MR.JUSTICE T.MATHIVANAN Criminal Appeal (Md.No.177 of 2013 Kaliamoorthy ..Appellant versus State rep.

By Inspector of Police, Ayyampetti Police Station, Thanjavur District.

(Crime No.221/2011) ..Respondent Prayer Appeal is filed under Section 378 of the Code of Criminal Procedure, against the judgment and conviction dated 04.02.2013 by the learned Principal District and Sessions Judge, Thanjavur in S.C.No.142 of 2012.

!For Appellant : Mr.M.Karunanithi ^For Respondent : Mr.C.Ramesh Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.RAJESWARAN, J.) This Criminal Appeal is preferred by the State as against the judgment and conviction passed by the learned Principal District and Sessions Judge, Thanjavur in S.C.No.142 of 2012 dated 04.02.2013.

2.The appellant/the sole accused in S.C.No.8 of 2011 was found guilty for the offence punishable under Sec.302 IPC, convicted and sentenced to undergo a life imprisonment with a fine of Rs.5,000/-, in default, three months Rigorous Imprisonment, by the Sessions Judge, Thanjavur , by his order dated 4-2-2013.

3.Charges have been framed against the accused for the offences punishable under Secs.341, 294(b) and 302 IPC.

The learned Trial Judge acquitted the accused from the charges under Secs.341, and 294(b) IPC as he was not found guilty of those offences.

However, the accused was found guilty of the offence under Sec.302 IPC.

4.The brief facts of the case are that PW1, one Maharana appeared before the Ayyampettai Police Station on 16-9-2011 at about 23.30 hours and gave a statement before the Sub Inspector of Police PW12 that her husband, brother and father were arrested by the Ayyampettai Police in connection with a theft case and they were also detained under the Goondas Act.

They are in jail for the last one year and therefore, her mother/the deceased and the accused went to Thanjavur some 20 days prior to the occurrence to meet the Advocate who is a relative of the accused.

There, they had consumed liquor and the deceased had misplaced her mobile phone and the accused had taken her mobile phone.

When the deceased asked for the same, the accused had denied having taken the mobile phone.

This was complained to PW3 by the deceased.

PW3 made negotiations on behalf of the deceased for the mobile phone with the accused.

The accused had accepted to get a new mobile phone for the deceased, but was evading the same and did not keep up the promise.

5. On 16-9-11, at about 11.00 am, the deceased and her mother in law PW2 went to Kumbakonam to see an Advocate and they also taken the son of PW1 with them.

On that day, around 8.30 pm, PW2 alone returned back and told PW1 that the deceased would come later.

At about 9.30 pm, PW1 heard a noise of quarrelling and went to the road side to see.

In front of Mariamman Cycle Stores, the accused pushed the deceased along with the child and attacked her indiscriminately with the Aruval/MO1.

The accused abused the deceased that she had spoiled his name and branded him as a thief.

After attacking the deceased, the accused ran away with the Aruval/MO1 on the western side.

The said occurrence was witnessed by one Selvam, son of Packirisamy, Selvarani, wife of Selvam and one Vijaya, wife of Deivanathan.

The deceased died on the spot and PW1 went to the Ayyampettai Police Station in a mini bus and gave the statement to PW12, the Sub Inspector of Police there.

PW12 recorded the statement in EX-P1 and registered a case in Cr.

No.221/11 for the offence punishable under Sec.302 IPC.

The printed FIR is marked as Ex-P8.

PW12 had also forwarded the printed FIR/EX-P8 to the court through PW13 and to the Inspector PW14.

The Inspector of Police PW14 received the FIR at 0.15 hours on 17-9-11 and took up the investigation went to the place of occurrence around 0.30 hours. prepared the Observation Mahazar/EX-P2 and drew a rough sketch. Ex-P9 in the presence of PW6 and another.

He also recovered MO2 and MO3, the blood stained earth and the earth without blood stains.

He conducted the inquest from 1.30 am to 3.30 am in the presence of the panchayat members. The inquest report is marked as Ex-P10.

The body was thereafter sent for postmortem through PW12.

6. PW10, the Doctor conducted the postmortem on 17-9-11 around 11.00 am.

He noticed 10 injuries on the dead body and gave his opinion that the deceased appeared to have died due to multiple cut injuries, blood loss, injury to vital organs and shock.

The postmortem certificate and the final opinion of the Doctor PW10 is marked as Ex-P7.

PW14 had examined one Mani/PW5, one Rajalakshmi, Amsavalli and a few others on 19-9-11.

The accused had surrendered before the Judicial Magistrate Court, Keeranur on 19-9-11.

On getting the information about the surrender of the accused, he took steps for police custody of the accused.

During the police custody, the accused gave a confession statement on 26-9-11 at about 5.45pm in the presence of PW7 and another.

Pursuant to the confession statement, PW14 had recovered MO1 Aruval and completed the investigation and filed the final report on 18-11-11.

7. During the trial, 14 witnesses were examined and 10 documents were marked on the side of the prosecution.

Seven Material Objects were also produced.

8. The incriminating materials were put to the accused under Sec.313(1) Cr.P.C. and the accused denied the same.

He had not examined any witness, however, two documents were marked on the side of the accused.

9. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor on the side of the respondent State.

We have also gone through the documents made available on record including the judgment of the Trial Court.

10. The learned counsel appearing for the appellant had contended that there is an unexplained delay in preferring the complaint and sending the same to the court.

There was also a delay in sending all the material documents and MOs?.

to the court.

He also pointed out the possibility of an earlier complaint having been given prior to Ex-P1 and pointed out the various contradictions in the evidence of PW1 to PW5.

11. Per contra, the learned Additional Public Prosecutor had submitted that there were five eye-witnesses to the occurrence and all the five eye-witnesses had spoken about the role of the accused in the commission of the offence.

12. PW1 to 5 are the eye witnesses to the occurrence.

PW1 is the daughter of the deceased and she is also the author of Ex-P1.

PW2 is the mother in law of the deceased, who had accompanied the deceased to meet the advocate on the fateful day.

PW3 is a friend of PW1.

He was examined as an eye witness and also a witness for the motive.

He had negotiation with the accused, on behalf of the deceased, with regard to her missing mobile phone.

PW4 and PW5 are independent eye witnesses.

PW4 is the wife of one Mariyappan and the occurrence had taken place in front of the said Mariyappan's cycle stores.

PW5 is residing near the place of occurrence and she witnessed the occurrence on hearing the noise of quarrel.

But the evidence of PW1 to PW5 are self-contradictory and not trustworthy.

PW1 is the daughter of the deceased and her statement is recorded as Ex-P1.

According to PW12, PW1 appeared before him in the police station on 16-9-11 at 23.30 hours and gave a statement.

The statement was recorded by PW12 and he registered the FIR/EX-P8 in Cr.

No.221 of 2011 under Sec.302 IPC.

13.As per Ex-P1, PW1 on hearing the noise of a quarrel, she went to the road side and witnessed the occurrence around 9.30pm.

After crying for some time by standing near the dead body , she went to the Ayyampettai Police Station in a mini bus and gave a statement before PW12.

The distance between the place of occurrence and the police station is referred to as 3 Kilometers in the printed FIR/Ex-P8.

E-P8/FIR was registered at 11.30pm and handed over to PW13 at 0.30 hours on 17-9-2011.

PW13 handed over Ex-P8, the printed FIR, to the concerned Magistrate at 1.30 am on 17-9-11.

14. Per contra, the case of the prosecution is contrary to the available evidence.

PW1 in her evidence would state that immediate to the occurrence, the police from Ayyampettai Police Station came to the place of occurrence, enquired her and obtained her signature and the signature from her grandmother PW12.

She would further add that she was also examined by the police in the hospital prior to the postmortem and the same was recorded and her signature was obtained by the police.

The signature in Ex-P1 was obtained only at that time.

PW2 would also state that she informed about the incident to the police and the police came to the place of occurrence along with her.

PW2 would further add that the police recorded her statement and obtained her thumb impression.

She would also state that they had obtained the signature of PW1 in the statement.

PW3 would also state that the police came to the place of occurrence immediately and they enquired PW1 and PW2 about the occurrence and recorded the statement from them.

PW4 had also, in a similar manner state, that the police had come to the place of occurrence immediately.

PW1 and PW2 who were there at that time were enquired by the police and their signatures were obtained.

Similarly from all the persons, signatures were obtained who were there available in the place of occurrence when the police had come there.

PW5 would also state that PW1 and PW2 were there in the place of occurrence when the police had come there.

15.The above evidence of prosecution witnesses reveals that the police came to the place of occurrence immediately after the occurrence and they obtained statements from PW1 and PW2.

According to PW2, the police obtained her thumb impression in the statement and PW1 had signed in that statement.

PW1 identified her signature in Ex-P1 that the signature was made at the hospital when she was examined prior to the postmortem at the hospital.

She had stated that the police came to the place of occurrence immediately and recorded her statement and obtained her signature.

Thus, from the available evidence, we find force in the submissions of the learned counsel appearing for the appellant/accused that there were complaints prior to EX-P1 but the same were suppressed.

16.Analysing the evidence of PW1 to PW5, there are several contradictions and the possibility of they having witnessed the occurrence is highly doubtful.

The presence of PW1 and PW2 and the time of occurrence was not spoken to by other eye witnesses.

According to PW1, she was in her house at the time of occurrence and on hearing about some noise of quarrel quarrel around 9.30 pm, she came to the road side and witnessed the occurrence.

The house of PW1 is neither mentioned in Ex-P9, the rough sketc.nor in the Observation Mahazar Ex-P2.

Several houses were referred to in Ex-P9, the rough sketch, but the house of PW1 is not mentioned and her house vicinity from the place of occurrence.

She came out of the house on hearing about the incident and at that time, the accused was running towards the western side and she witnessed the same from a distance of 100 feet.

PW3 to PW5 have not spoken about the presence of PW1 in the place of occurrence.

PW2 is the grandmother of PW1 and the mother in law of the deceased.

She had accompanied the deceased to Kumbakonam to see the Advocate, but she returned home around 5.00 pm.

The deceased told her that she would purchase some goods and then come home.

The occurrence had taken place at 9.30 pm and the Investigation Officer has not recovered any goods from the place of occurrence that the deceased had purchased.

PW2 said to have followed PW1 and witnessed the occurrence, but, PW1 did not refer so in her statement EXP1 as well as in her evidence.

PW2 did not accompany PW1 for lodging the complaint, but, she has stated in her evidence that she only informed the police about the occurrence.

From the available evidence, it is hard to believe the presence of PW2 at the time of occurrence.

Not only PW1, but the other witnesses PW3 to PW5 have also referred to the presence of PW1 in the place of occurrence and at the time of occurrence and hence, it is hard to believe the presence of PW2.

PW3 is residing about 50 houses away from the place of occurrence and he was in his house on 16-9-11.

At about 9.00 pm, he heard some noise about some quarrel and he went to the road side and noticed the occurrence.

But, in the cross examination, he would state that when he came out of the house, he saw somebody running some 60 to 70 feet away from him.

He did not mention about the presence of other witnesses in the place of occurrence on that day.

Further, the time of occurrence is also varying from the prosecution side.

He also gave evidence on the motive part.

He negotiated with the accused on behalf of the deceased for the return of the mobile phone which was lost by the deceased.

According to PW3, the accused had agreed to provide a new mobile phone to the deceased, but he did not keep up the promise.

In our view, this could never be taken as a strong motive for the accused to commit the offence.

Further, regarding the motive, there are contradictions that PW3 alone negotiated on behalf of the deceased, whereas PW2 would state that there was a panchayat held under the leadership of one Natarajan.

But, PW1 did not mention anything about the negotiations or the panchayat of PW3.

Thus, the presence of PW3 in the place of occurrence has not been spoken to by any witness.

PW4 is the wife of one Mariyappan and in front of his cycle shop only, the occurrence had taken place.

She had stated that on hearing the noise, she came out of the house and witnessed the accused attacking the deceased.

The deceased went to Kumbakonam in the morning along with PW2 and PW1's child.

PW1 and PW2 have stated that the child of PW1 was with the deceased at the time of occurrence.

But, PW4 did not mention about the presence of the child with the deceased at the time of occurrence.

So also the presence of PW4 has not been spoken about by any other witness.

17. Though PW5 was examined as an eye witness, her evidence is self-contradictory to her examination and cross-examination.

In the cross-examination, she would state that on hearing the noise, she came out of the house and found a crowd, which was watching the deceased.

From her evidence, it could be seen that he came to the place of occurrence only after the occurrence.

Her presence in the place of occurrence was not spoken to by any other witnesses.

Thus, her evidence is also not trust-worthy to warrant a conviction of the appellant.

18. The prosecution had also failed miserably by not examining the witnesses referred to by PW1 in Ex-P1.

Ex-P1 is the very fiRs document and it is mentioned that the occurrence was witnessed by one Selvam, son of Packirisamy, Selvarani, wife of Selvam and one Vijaya, wife of Deivanathan.

But curiously, none of these witnesses have been examined by the prosecution.

Similarly, PW2 in her evidence would state that the occurrence was known to one Kalyan, Lakshmanan, Raman, Parvathi and others. Those persons referred to by PW2 were also not examined.

Similarly, PW5 had also mentioned some of the names as eye witnesses to the occurrence and those witnesses were also not examined.

19. There is also a considerable delay in registering the FIR and the same reaching the court and the possibility of existence of an earlier complaint prior to Ex-P1 cannot be ruled out.

20. PW2 and the deceased went in the morning on 16-9-11 and returned around 5.00 pm.

But, PW2 alone returned home and she told PW1 that the deceased had gone to purchase some goods and would come later.

The occurrence had taken place at 9.30 pm, but, there was no reference about any goods having been recovered from the place of occurrence.

Further, the deceased was having the minor child of PW1 at the time of occurrence.

The accused said to have pushed the deceased along with the child and attacked, but, there was no reference about any injury to the child of PW1.

21. PW1 in her cross examination would state that since her mother was involved in theft cases, she was having more enemies and there was a quarrel a few days before the occurrence, for which, she had also given a police complaint.

22. With regard to arrest and recovery of weapon of crime, according to the prosecution MO1 Aruval was recovered on 26-9-2011 on the confession of the accused.

But, the prosecution witnesses categorically deposed that the Inspector of Police concerned had recovered the weapon of crime in the place of occurrence itself.

Thus, arrest and recovery of MO1 has become unbelievable.

Thus, a closer scrutiny of the entire evidence of PW1 to PW5, who are said to be the eye witnesses on the side of the prosecution, would clearly reveal that they

were not the witnesses to the actual assault said to have been made by the accused.

Thus, it is the case where the prosecution had not proved the case beyond reasonable doubt and hence, the benefit of doubt is to be extended to the accused only.

23. In the result, the conviction and sentence imposed by the Trial Judge is set aside and the appeal is allowed and the accused is acquitted of all charges framed against him.

Fine amount, if any, paid by the appellant shall be refunded to him.

The appellant is directed to be set at liberty forthwith, unless his presence is required in connection with any other case/proceedings.

To 1. Inspector of Police, Ayyampetti Police Station, Thanjavur District.

2. The learned Principal District and Sessions Judge, Thanjavur.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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