

Veerappan Vs. the State

Veerappan Vs. the State

SooperKanoon Citation : sooperkanoon.com/785607

Court : Chennai

Decided On : Jan-07-1993

Reported in : 1994CriLJ2584

Judge : K.A. Thanikkachalam and;K.M. Natarajan, JJ.

Appeal No. : Criminal Appeal No. 1122 of 1986

Appellant : Veerappan

Respondent : The State

Advocate for Def. : S. Shanmughavelayuthan, Govt. Adv.

Advocate for Pet/Ap. : Mrs. M.S. Gnanasoundari, Adv.

Judgement :

K.M. Natarajan, J.

1. This appeal has been filed by the accused in Sessions Case No. 47 of 1986 on the file of the learned Second Additional Sessions Judge, Salem, challenging the legality and correctness of his conviction under section 302 of the Indian Penal Code and the sentence of Imprisonment for Life.

2. The accused/appellant was tried for the offence of murder on the allegation that on 9-6-1985 at about 7-30 a.m., at the National Sago and Starch Factory. Old

Suramangalam, Salem, the accused cut the deceased Thimmanna Bhat with a koduwal on his head and other parts of the body, as a result of which he succumbed to the injuries on the same day. To substantiate the above charge, the prosecution has examined PWs 1 to 17, filed Exs. P-1 to P-24 and marked M.Os. 1 to 9.

3. The case of the prosecution as revealed from the oral and documentary evidence, can be briefly stated as follows :- PW 1 is the son of the deceased. PW 4 is the wife of the deceased. The deceased was employed as Manager in the National Sago and Starch Factory and retired during 1981. Again he was appointed as Adviser in the said factory, as is evidenced by Exs. P1 and P2. The deceased was living in the quarters belonging to the said factory. The accused used to unload bags from the lorries to the godown and it is stated that he was the leader of the coolies who unload the bags. For unloading the bags from the lorry, the coolies were paid 25 Paise per bag. Since 1985, the accused and the other coolies were demanding for enhancement from 25 Paise to 40 Paise per bag on the ground that enhanced rate was being paid by others. In respect of the said demand, there was some discussion between the deceased, PWs 6 and 7 as well as the accused but they did not arrive at any final settlement. When it was informed to PW 5, the proprietor of the factory, he said that whatever decision was taken and the rate fixed, he would pay the same from 1-5-1985. It is stated that the accused was complaining that the deceased was standing in the way of the coolies getting enhanced rate of 40 Paise per bag. This is said to be the motive for the occurrence.

4. On 8-6-1985, PW 1, who was the son of the deceased and who is employed as a Teacher in Malco Vidhyalaya Matriculation School, Mettur Dam after finishing his M.Sc., B.Ed., returned to his house in the night. At that time, the deceased was not talking to him freely. When he questioned the deceased about the same, the latter told him that the accused as the leader of the coolies demanded 40 Paise per bag but the proprietor of the factory was not willing to pay 40 Paise but only 25 Paise per bag and in respect of that there was some discussion but no conclusion was arrived at and as such, he was very much tired.

5. On the next day viz., 9-6-1985 at about 6-45 a.m., the deceased left the house after taking breakfast stating that he is going to the nearby temple. A little later, PW 1 was proceeding to the office room of his father in order to read Indian Express newspaper. At the time, he heard the noise of his father that he is being beaten by the accused. PW 1 rushed to that place and found the accused cutting the deceased indiscriminately with an aruval (M.O. 1) on his head, chest and hands. When PW 1 went near his father, he fell down PWs 2 and 3 also witnessed the occurrence. According to PW 1, at that time the accused was wearing M.O. 2 blue shirt and M.O. 4 lungi and he was having M.O. 3 towel on his person. Thereupon, the accused ran away with M.O. 1 from the scene place. A little later, his mother PW 4 was brought by PW 3. When PW 4 questioned her husband, he said that the accused cut him. Thereafter, he could not talk. Thereupon, PW 1 brought a car and took the deceased to the Government Hospital, Salem. P.W. 4 and one Duraiswami accompanied PW 1 and the deceased to the hospital. In the hospital, PW 9 Dr. Kalanidhi examined the deceased and declared him dead P.W. 9 sent Ex. P 11 intimation to the police.

6. In the meantime, at about 8-00 a.m., the accused went to Suramangalam Police Station and gave a report Ex. P 9 to PW 16, the Sub-Inspector of Police. Ex. P 9 was admitted only to show that the accused appeared and gave a report. The contents of the same were not relied on. The accused also produced the koduval (M.O. 1). PW 16 arrested him and seized M.O. 1 koduval, M.O. 2 shirt worn by the accused and also M.O. 4 lungi under Form 95 Ex. P 10 attested by PW 8 and another. He also prepared a separate mahazar. Thereupon, he registered a case in Crime No. 528 of 1985 under section 302 of the India Penal Code, prepared First Information Report Ex. P 15 and sent it to Court and copies thereof to the higher officials.

7. P.W. 17 was the Inspector of Police, Crimes, Suramangalam and he was deputed by the Supt. of Police to investigate this case as the Inspector of Police, Law and Order, Suramangalam, was on other duty. PW 17 got the First Information Report and immediately proceeded to the scene place, inspected the same in the presence of PW 6 and another and prepared Ex. P 6 observation mahazar. He drew Ex. P 23 rough sketch. At about 11-40 a.m., he seized the

blood-stained earth M.O. 5 and also the towel of the accused M.O. 3, sample earth M.O. 6 and chappels M.O. 7 series under Ex. P 7 attested by PW 6 and another. At about 1-30 p.m., he examined the accused who was in Suramangalam Police Station and sent him for judicial remand. At about 1.45 p.m., he went to the Government Hospital, Salem, held inquest over the dead body and during the inquest he examined PWs 1, 2 and 4 and others. Ex. P-24 is the inquest report. After completing the inquest, he entrusted the dead body with PW 14 Constable along with Ex. P 12 requisition to the Medical Officer for conducting autopsy.

8. P.W. 10 is the Medical Officer attached to the Government Hospital, Salem. In pursuance of the requisition received from PW 17 he conducted autopsy on the dead body of Thimmanna Bhat at about 4-35 p.m., on 9-6-1985 and found the following external injuries :

1. An incised wound 3 cm x 1 cm x 1/2 cm on the left parietal region of the scalp. Underlying skull bone fractured.
2. An incised wound 3 cm x 1/2 cm x 1/2 cm on the left parietal region 3 cm medial to wound No. 1. Underlying skull bone fractured.
3. An incised wound 3 cm x 1 cm x 1/2 cm on the left parietal region 2 cm medial to wound No. 2. Underlying skull bone fractured.
4. An incised wound 2 cm x 1/2 cm x 1/2 cm on the left parietal region of the scalp. Underlying skull bone fractured.
5. An incised wound 3 cm x 1 cm x 1 cm on the right fore-head, underlying skull bone fractured.
6. An incised wound 3 cm x 1 cm x 1 cm on the right fore-head 1 cm anterior to Wound No. 5.
7. An incised wound 4 cm x 1 cm x 1 cm on the lateral aspect of the right elbow.
8. An incised wound 2 cm x 1 cm x 1 cm on the posterior aspect of the right fore-arm in its middle third.

9. An incised wound 2 cm x 1 cm x 1 cm on the posterior aspect of the right fore-arm 2 cm lower to Wound No. 8, underlying bones fractured.
10. An incised wound 10 cm x 2 cm x 2 cm on the right palm extending from base of little finger to the wrist.
11. An incised wound 3 cm x 2 cm x 1 cm on the posterial aspect of left elbow.
12. An incised wound 4 cm x 1 cm x 1 cm on the medial aspect of left fore-arm in its middle third.
13. An incised wound 2 cm x 1/2 cm x 1/2 cm on the dorsum of left hand.
14. An incised wound 6 cm x 2 cm x 2 cm on the left palm extending from base of little finger to the wrist.

On internal examination, he noticed that the stomach contains 500 Grams of partially digested food particles. The right parietal lobe lacerated. He preserved the viscera for chemical analysis. At first instance, he reserved the opinion pending receipt of the report of the Chemical analysis. Ex. P 13 is the post-mortem certificate. PW 10 received the report of the Chemical Examiner Ex. P 14 to the effect that no poison was detected in any of the items. Thereafter, PW 10 gave his opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries about 8 to 12 hours prior to post-mortem examination. He was of the further opinion that the external injuries corresponding to the internal injuries could have been caused with a weapon like M.O. 1. He opined that the injuries found on both the hands of the deceased would have been caused while warding off the blow. He also opined that external injuries are sufficient in the ordinary course of nature to cause death.

9. P.W. 17 continued further investigation and examined the post-mortem doctor PW 10. Thereafter, he examined PWs 3, 6 and 8 and others. He sent the seized articles to Court. He examined PW 4 and others on 10-6-1985. On 11-6-1985, he examined PWs 5, 7, 11 and 12 and others. On 12-6-1985 he examined PWs 9, 10 and 16. On 17-6-1985 he gave a requisition Ex. P 17 to the Judicial Magistrate to send MOs. 1 to 9 for chemical analysis.

10. P.W. 15 is the Head Clerk attached to the Judicial Second class Magistrate Court No. 2, Salem. He deposed that in pursuance of the requisition received from PW 17, M.Os. 1 to 9 were sent for chemical analysis and Exs. P 19 and P 20 are the reports of the Chemical Examiner and Serologist respectively. On 20-6-1985, PW 7 handed over the papers to the Inspector of Police, Law and Order, Suramangalam, who after receipt of the report of the Chemical Examiner, filed charge-sheet against the accused.

11. When the accused was examined under section 313 Cr.P.C., with reference to the incriminating piece of evidence appearing against him, he admitted that he was a cooly employed in the factory belonging to PW 5, that the deceased was employed in the said factory as manager and retired and thereafter, he does not know where he was employed. He denied having demanded excess rate of 40 Paise per bag and also the receipts Exs. P 3 and P 4. He further denied the evidence adduced on behalf of the prosecution. He denied having given the complaint Ex. P 9 to the police station and produced M.O. 1. However, he would say that since he was demanding 40 Paise as cooly per bag, he was taken from his house and this case has been foisted against him. No witness was examined on behalf of the accused.

12. The learned trial Judge, taking into consideration the oral and documentary evidence and for the reasons stated in the judgment, came to the conclusion that the prosecution has proved the charge against the accused and consequently convicted and sentenced him as stated above. The accused has preferred this appeal.

13. The Madras Legal Aid Centre appointed Mrs. B. S. Gnanasoundari to defend the appellant. The learned counsel took us through the recorded evidence and made several submissions. According to the learned counsel, there is no sufficient motive for the commission of the crime. She would further submit that there are material contradictions in the evidence of the eye witnesses. PWs 1 to 3 and as such, no reliance can be placed on their evidence. According to the learned counsel for the appellant, there is no acceptable evidence to connect the accused with the crime and as such, the accused deserves to be acquitted.

14. Per contra, the learned Government Advocate appearing for the State would submit that this is a case where the occurrence took place in a broad day light. According to him, there are three eye witnesses to the occurrence. Besides that, the accused himself appeared before the Police Station after the occurrence and produced the weapon of offence and also his blood-stained clothes, which were recovered. The blood stain found in the cloth of the accused tallied with that of the deceased. There is enough evidence with regard to the motive aspect also. There are no material contradictions which go to the root of the case and as such, no interference is called for.

15. The point for consideration is :

Whether the prosecution has established the guilt of the accused beyond all reasonable doubt

16. Point :- As regards the motive aspect, it is not in dispute that the deceased was employed in the factory of PW 5 where he was murdered, as manager for a number of years. PW 5, the proprietor of the factory, himself has deposed that the deceased was the manager of the factory till 1981 and even after retirement, taking into consideration his ability and experience, he was appointed as the Adviser of the factory. It is seen from the evidence of PWs 5, 6, 7, 11 and 12 that coolies were employed in order to unload the bags from lorries to the factory, that they were being paid at the rate of 25 Paise per bag, that the accused was receiving the wages as the leader of the other coolies and he used to distribute the same. According to them, about 10 or 20 days prior to the occurrence, the accused raised a demand for increasing the rate from 25 Paise to 40 Paise per bag on the ground that others were paying at the rate of 40 Paise per bag, and in respect of the same, there were discussions and negotiations, in which the deceased also took part besides the accused and PWs 5 to 7. The accused also admitted in his statement under section 313 Cr.P.C., that it is a fact that there was a demand for increase in rate, even though he denied that there was enmity on account of the same between him and the deceased. That no decision was arrived at and the talk still continues is clear from the evidence of PWs. 5 to 7. It is clear from the evidence of PW 5 that he agreed to pay whatever rate fixed as a result of

the discussion from 1-5-1985.

17. PW 11 was one of the employees in the said factory. He had deposed clearly in his evidence about the demand raised by the accused for the increase in the rate and the discussion in which the deceased took part. It is his further evidence that the accused and his people were quarrelling and they did not come for work and at the instance of the deceased, he and others unloaded the bags but they could not transport them into the factory since the accused and others objected even the unloading of bags, to which they asked the accused to question the deceased. PW 12 also corroborated his evidence. Thus, it is clear from the evidence of PWs 11 and 12 that in respect of the demand of excess rate, it was only the deceased who was putting forth all the obstacles and he was standing in the way of their getting the higher rate and that he was making alternative arrangements for unloading and also for removing the bags from the factory by engaging PWs 11 and 12 and other labourers and on account of the same, the accused was aggrieved. Since the accused thought that the deceased was responsible for their not getting the higher rate, he had resorted to this brutal attack. Hence, from the various evidence adduced on behalf of the prosecution it cannot be said that there is no motive for the accused to commit this crime. It is well established proposition that in cases where there are direct eye witnesses, whose evidence is trustworthy and acceptable, motive does not assume much importance. But, as already discussed, it cannot be said that there is no motive at all for the accused to commit the offence in question.

18. Next we have to see whether there are acceptable evidence with regard to the actual occurrence. The prosecution relied on the evidence of PW 1 to 3. PW 1 is the son of the deceased. It is the evidence that he, his mother PW 4 and his father are living in the quarters put up in the factory viz., National Sago and Starch Factory, where the deceased was murdered. Though he was employed as a teacher in Mettur Dam, he used to come every Saturday night and stay till Monday morning and leave for Mettur Dam. According to him, even after retirement his father was employed in the said factory and on the night of 8-6-1985 Saturday, the previous day of the occurrence, his father informed him about the demand made by the accused for higher rate and also about the failure of the talks and as such,

he was tired. He has further deposed that on the date of the occurrence, at about 6-45 a.m., his father, the deceased, after taking breakfast, left the house to go to the nearby temple. A little later, after taking bath PW 1 was proceeding to the office of his father in order to read Indian Express newspaper and at that time, he heard the noise of his father that he is being attacked and killed by the accused. When he rushed there, he noticed the accused cutting his father with M.O. 1 on his head, neck and on both his hands indiscriminately. When he reached near his father, he fell down. Thereafter, the accused ran away from the scene place. This was also witnessed by PWs 2 and 3. Both of them also corroborate the evidence of PW 1 in all material particulars and they also uniformly and consistently state that it was only the accused who cut the deceased with M.O. 1 on the head, chest and on both the hands.

19. P.W. 2 is an employee in Thomas Company, Salem and he was previously employed in the National Sago and Starch Factory as an Assistant. On the date of the occurrence at about 7-00 a.m., he went to the officer from room of the deceased in connection with the payment of bonus due to him from the said factory. According to him, when he was proceeding through the wicket gate adjoining the main gate in his cycle, the accused was proceeding at a distance of 20 feet and the deceased was going ahead of him by 40 feet. The accused suddenly cut him with a koduwal which he was having in his hands. The deceased began to run on receipt of the injury. The accused chased him, caught hold of his hands and cut him. PW 1 also came there. The deceased fell down. Thereafter, PW 1 brought a taxi and took the deceased to the Government Hospital, Salem.

20. It is the evidence of PW 3 that on the date of the occurrence at about 7-00 a.m., in order to purchase Hindu newspaper, he went by cycle to the Salem Railway Station and after purchasing the paper, he went to the office of the deceased in order to meet him. At that time, he saw the deceased and another person who was wearing blue colour shirt and was having a koduwal. The said person suddenly cut the deceased and the deceased raised a hue and cry 'Veerappa'. Thereupon, he went to the house of the deceased and informed his wife who came there.

21. Though the learned counsel for the appellant/accused vehemently argued that there is material contradiction in the evidence of the eye witnesses, we do not find any justification in the said submission. On going through the evidence of these witnesses viz., PW 1 who is the son of the deceased and PWs 2 and 3, who are independent witnesses, who consistently depose about the attack on the deceased by the accused near the factory in question, we find no merit in the submissions made by the learned counsel for the appellant. Nothing tangible has been elicited in their cross-examination to discredit their testimony. The only contradiction which has been pointed out by the learned counsel for the appellant is that according to PW 1 when he went to the scene place on hearing the noise of his father, he saw PWs 2 and 3 there while PWs 2 and 3 would say that they were proceeding to the scene place by cycle and at that time, they witnessed the occurrence. We do not find any material contradiction since PW 1 might not have known as to how they came. When he was there, he noticed the presence of Pws 2 and 3. The mere fact that PWs 2 and 3 were proceeding to the scene place by cycle, it would not in any way affect the veracity of these witnesses and their presence cannot be doubted or that of PW 1. Thus, on a careful consideration of the entire evidence of PWs 1 to 3, we find that their evidence is cogent, convincing and trustworthy.

22. Next we have got the testimony of the medical officer PW 10 who conducted autopsy and issued the post-mortem certificate. P.W. 10 found as many as 14 external injuries and he was of the opinion that the deceased would appear to have died on account of the injuries noticed by him. He was also of the opinion that the external injuries and the corresponding internal injuries could have been caused by cutting with a weapon like M.O. 1 and external injuries 1 to 6 are sufficient in the ordinary course of nature to cause death. Nothing tangible has been elicited in his cross-examination to discredit his testimony. The only question put to him was whether the weapon of offence was shown to him by the Inspector of Police. While during the course of cross-examination he says that the weapon was not shown to him, in the inquest he say that the weapon was shown to him. Even in the cross-examination he reiterated that all these injuries could have been caused by any weapon like knife including M.O. 1 koduwal. The medical evidence amply supports the evidence of the eye witnesses with regard to the manner and

the nature of injuries inflicted which were responsible for his death.

23. Next we have got another incriminating circumstance against the accused. It is only the accused who appeared before PW 16 within half-an-hour of the occurrence and produced M.O. 1 and gave Ex. P 9 report. Though the contents of the report Ex. P 9 are not admissible, yet, it is settled proposition that it is relevant to this extent viz., that the accused appeared before the police station and gave a report and produced the weapon M.O. 1. In this case, PW 16 after recording Ex. P 9, also seized the clothes M.Os. 2 and 4 of the accused as well as M.O. 1 knife. They were sent for chemical analysis. Though M.Os. 2 and 4 contained human blood, the result of the test of the group of blood of M.O. 1 could be inconclusive but in respect of M.Os. 2 to 4, the blood group is 'B', which tallied with the blood group of the deceased. That the accused appeared before the police station and gave a report and the weapon of offence was recovered from him is clearly spoken to by PW 16 and PW 6, who is an independent witness and against whom nothing has been said to discredit his evidence. It is the evidence of the eye witnesses that at the time of the occurrence, the accused was wearing M.Os. 2 and 4 and he was also having M.O. 3. That has not been challenged and that clearly establishes that it was the accused who was responsible for this murder.

24. In this connection, the learned Public Prosecutor drew our attention to the decision reported in *Siddappa v. State of Karnataka* : 1990(2)KarLJ242 wherein it has been observed as follows :-

'Where the accused had himself approached to the Dalapathi, a Police Officer with blood stained axe and blood stained clothes and additional link in the chain of circumstances had been provided by other witnesses, the fact of his giving the information alleging the commission of murder would be clearly admissible against him as evidence of his conduct.'

The ratio laid down in the above decision applies in all fours to the case on hand. In view of Section 8 of the Evidence Act, the fact that the accused appeared before the police station and produced the weapon M.O. 1 and gave a report and that from him the blood-stained clothes were recovered are all admissible and they can be used against him for convicting him.

25. Learned counsel for the appellant relied on the decisions reported in *Zwingee Ariel v. State of Madhya Pradesh*, : AIR 1954 SC15 and *Elukuri Seshapani Chetti v. Emperor*, 1936 M.W.N. 1241 : (1934) Cri LJ 323. On a careful consideration of the above decisions, we find that the ratio laid down therein is not applicable to the facts of this case, as they are cases where during investigation the accused made a confessional statement and it was clearly held that the confession is hit by Sections 25 and 26 of the Evidence Act but that is not the case here. Hence, those decisions are not at all helpful to the case in hand.

26. Learned counsel for the appellant further submitted that it is in evidence that at the time of the occurrence crowd also gathered and as such, PWs 1 to 3 could not have witnessed the occurrence. We do not find any merit in this contention. There is absolutely nothing to show that the crowd surrounded the deceased and the accused in such a way that the witnesses could not notice the actual attack. On the other hand, we find that after PWs 1 to 3 went to the scene place on hearing the noise people gathered subsequent to the occurrence. Therefore, the non-examination of those witnesses also will not in any way affect the case of the prosecution and once the evidence of PWs 1 to 3, who are eye witnesses, is found to be reliable and trust worthy, certainly a conviction can be maintained. No other point was raised in this appeal.

27. Thus, on a careful consideration of the entire material, we have no hesitation in holding that the prosecution has proved the charge against the accused beyond all reasonable doubt and the learned trial Judge is perfectly justified in holding that the accused is guilty of the charge framed against him.

28. In the result, the conviction and sentence imposed by the trial court are confirmed, the appeal fails and is dismissed.

29. Appeal dismissed.