

Arumugan and Etc. Vs. the State

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Court : Chennai

Decided On : Aug-02-1995

Reported in : 1996CriLJ525

Judge : J. Kanakaraj and; Janarthanam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161 and 313; Evidence Act - Sections 27

Appeal No. : Criminal Appeal Nos. 141 and 287 of 1987 (Against order of Sessions Judge of the Court of Session An

Appellant : Arumugan and Etc.

Respondent : The State

Advocate for Def. : R. Raghupathi, Addl. Public Prosecutor

Advocate for Pet/Ap. : S. Ashok Kumar and ;K. V. Sridharan, Advs.

Judgement :

Janarthanam, J.

1. The appellants in C.A. Nos. 287 and 141 of 1987 are respectively accused Nos. 1 and 2 in S.C. No. 72 of 1986 on the file of Court of Session, Anna District, Dindigul. A 1 was found guilty under Section 302 I.P.C. convicted thereunder and

sentenced to imprisonment for life. Likewise, A2 was found guilty under Section 302 read with Section 109 I.P.C. convicted thereunder and sentenced to imprisonment for life.

2. Aggrieved by the said conviction and sentence, the present actions had been resorted to.

3. Brief facts are :-

(a) Accused 1 and 2 are the residents of Dindigul. One Murugan (since deceased) had been residing at Paraikulam, a segment of Dindigul, P.W. 1 was originally married to one Sundaram some three decades before and through him she had three offspring - two male and one female. Somehow or other, she developed illicit contact with the deceased Murugan and came up to live with him for the past 20 years prior to occurrence, which event happened on 17-4-1986. Through the deceased she begot four children P.W. 1 had been residing at Kakkan Nagar, Dindigul. She also has two houses at Paraikulam, a segment of Dindigul. It appears that her husband - the deceased had been making out his livelihood by engaging himself in soliciting for prostitution and he had been carrying on such an activity in one of the houses, which P.W. 1 had at Paraikulam.

(b) Near Paraikulam E.B. Railway Colony is situated and in that vicinity there are petty shops, tea shops and other shops. There is a Venkatachalapathy temple in that area and adjacent to the temple, there is a press going by the name Indra press. In the vicinity of the temple and the press, there is also an arrack shop.

(c) P.W. 2 had been employed as a binder in Indra Press. He is unmarried. He had been staying in a room in the press itself. At about 5.00 or 5.30 A.M. in the morning of every day, it appears either P.W. 2 or his only employer had been performing the feat of lighting the lamp in the said Venkatachalapathy temple located adjacent to the press. P.W. 3 had been running a bunk shop. Like wise, P.W. 4 had been running a firewood shop. The bunk shop and the fire wood shop of P.Ws. 3 and 4 are situated adjacent to an arrack shop in which P.W. 5 had been employed as a worker.

(d) There is a place called Aranmanaikulam situate adjacent to E.B. colony area. At 3.00 A.M. on 17-4-1986, P.W. 6 rickshaw puller had passed Aranmanaikulam area. At that time, accused 1 and 2 engaged his rickshaw and they in fact got down near Ganesh theatre.

(e) At about 4.30 A.M. the deceased went to the arrack shop, in which P.W. 5 had been engaged with his work. He procured 50 ml. of arrack and consumed the same. Thereafter, it appears, the deceased had been sitting in a tea shop located opposite to Ganesh theatre. At that time, the deceased requested P.W. 4 to procure 100 ml. of arrack, to which course she was not amenable. However, she procured a plantain from a nearby shop to the deceased at his behest. Thereafter, the deceased and accused 1 and 2 went to the said arrack shop for consuming arrack. A 1 procured 300 ml. of arrack for a price of Rs. 10/- and P.W. 5, in turn, divided the said arrack into three parts by pouring in three tumblers and the same were served to the deceased as well as accused 1 and 2. After consuming the same, the deceased as well as accused 1 and 2, it is said, were quarrelling with each other. Thereafter, all of them went towards E.B. Colony.

(f) At about 5.30 A.M. as usual, P.W. 2 after taking bath went to the temple for the purpose of lighting the lamp. At that time, he had seen A1 and A2 and the deceased conversing with each other in front of temple. All of a sudden, and quite unexpectedly, A2 was stated to have tripped to the deceased and he consequently, fell on the ground. At that juncture, A1 was stated to have whipped out M.O.I. knife from his waist and inflicted three stabs on abdomen and chest regions of the deceased. Thereafter, both A1 and A2 ran away towards the bus stand on the northern side. P.W. 3 who was then sleeping in front of his bunk shop was stated to have woken (awakened) upon hearing the noise and thus had the opportunity of witnessing the occurrence.

(g) One of the daughters of P.W. 1, namely, Eswari had been residing in one of the houses of her mother at Paraikulam. On the morning of the day prior to the occurrence P.W. 1 went to Paraikulam to see her ailing daughter Eswari and she had stayed in her daughter's house for that night. On day, dawn, P.W. 1 came to know from her younger sister Seeniammal that her husband's dead body was lying

in front of Indra Press formerly known as Natesh Press. She immediately rushed and reached the scene of occurrence. There she found her husband the deceased lying there with stab injuries on his person. She immediately thereafter rushed and reached Dindigul North Police Station of which, P.W. 12 was the then Sub-Inspector of Police. It was at about 7.30 A.M. P.W. 1 appeared before him and lodged an information Ex. P. 1. On the strength of Ex. P1, P.W. 12 registered a case in Cr. No. 569 of 1986 under Section 302 I.P.C. Ex. P10 is the printed copy of the First Information Report. He prepared express reports and sent the same to the concerned officials.

(h) P.W. 14 was the then Inspector of Police. At about 8.00 A.M. he received express report and immediately took up further investigation in this case. He rushed and reached the scene of occurrence at about 8.30 A.M. After inspecting the scene of occurrence, he prepared Ex. P. 2 observation mahazar in the presence of witnesses P.Ws. 7 and 9. He also drew a rough sketch of the scene Ex. P21. He seized from the scene M.O.2 blood stained earth, MO 3 sample earth, M.O. 6 cigarette packet, M.O. 7 match box, MO. 5 rupee Note 1, M.O. 10.1 rupee Note-1 and M.O. 11.50 ps. coin 1 under the cover of a mahazar. He held inquest over the body of the deceased between 9 A.M. and 12.00 noon. Ex. P. 20 is the inquest report. During the inquest, he examined P.Ws. 1, 5 and others. After the inquest was over, he sent the body of the deceased through constable P.W. 11 along with a requisition for the purpose of autopsy. Thereafter, he examined P.Ws 2 to 7, 9, 10 and others. He searched for the accused and they were absconding.

(i) P.W. 10 was the then Medical Officer attached to Government Hospital, Dindigul. At 5.15 pm he conducted autopsy over the body of the deceased. Ex. P8 is the post-mortem certificate he issued. Ex. P9 is the chemical examiner's report regarding viscera. He would opine that all the injuries he found on the person of the deceased could have been caused by a weapon like Mo.O.1 He would further opine that injury No. 4 is necessarily fatal.

(j) After autopsy was over, P.W. 11 constable seized from the body of the deceased M.O.4 dhoti, Mo. 5 shirt, and M.O. 8 gold ring and handed over the same at the police station.

(k) On 23-4-1986, at 4.00 P.M. P.W. 14 arrested A2 near Winci theatre situate at Dindigul-Palani by-pass in the presence of P.W. 8. On interrogation. A2 gave a voluntary confession statement, the admissible portion of which is Ex. P3, P.W. 14 also seized from A2, M.O. 2 lungi and M.O. 13 shirt under Ex. P. 4 mahazar attested by P.W. 8. Pursuant to Ex. P3 confession, A2 took P.Ws. 8 and 14 to Palani and pointed out A1 who was standing at the bus stand in front of Palani Government Hospital. P.W. 14 arrested A1 in the presence of P.W. 8. On interrogation. A1 gave a voluntary confession statement, the admissible portion of which is Ex. P5. He also seized from A. 1 M.O. 14 shirt and M.O. 15 dhothi under Ex. P. 6 mahazar. Pursuant to Ex. P. 5 confession, A1 took out and produced M.O. 1 knife kept concealed underneath a truck box in the house of Bhominathan and the same was seized under Ex. P. 7 mahazar attested by P.W. 8.

On 24-4-1986, he sent Ex. P11 requisition to Judicial II class Magistrate court No. I, Dindigul, for the purpose of sending the incriminating articles to the chemical examiner for the purpose of examination. He also sent Ex. P. 15 requisition to the same court on 7-5-1986 for sending some other incriminating material objects to the chemical examiner for the purpose of examination.

(l) P.W. 13 was the then Head clerk attached to Judicial II class Magistrate No. 1, Dindigul. As per the directions of learned Magistrate, he separately packed and sent M.Os. 2 to 5 to the chemical examiner for the purpose of examination under the original of Ex. P. 12 office copy of the letter. Likewise, as per the directions of learned Magistrate, he separately packed and despatched M.Os. 1 and 12 to 15 to the chemical examiner for the purpose of examination, under the original of Ex. P. 16 office copy of the letter. Exs. P. 13, P. 14 and P. 17 are the Chemical examiners report and Exs. P. 18 and P. 19 are the reports of the Serologist.

(m) In the mean time, P.W. 14 Inspector had been transferred and his successor Inspector laid the final report before the Judicial II class Magistarate No. 1, Dindigul on 6-8-1986, against the accused A1 under Section 302 and as against A2 under Section 302 read with Section 109 I.P.C.

4. (a) On committal, learned sessions Judge framed a charge as against A1 under Section 302 I.P.C. and as against A2 under Section 302 read with Section 109

IPC.

(b) Both the accused, when questioned as respects the charges so framed, denied the same and claimed to be tried.

5. The prosecution in proof of the charges so framed, examined P.Ws. 1 to 14, filed Exs. P1 to P21. and marked M.Os. 1 to 15.

6. Both the accused, when questioned under Section 313 Cr.P.C. as respects the incriminating circumstances appearing in evidence against them, denied their complicity in the crime. They however, did not choose to examine any witness on their behalf.

7. Learned Sessions Judge, on consideration of the materials placed and after hearing the arguments of respective learned counsel for the defence and learned Public Prosecutor, however, rendered the verdict, as stated above.

8. The sum and substance of the arguments of Mr. K. V. Sridharan, learned counsel appearing for A1 (Appellant In C.A. No.287 of 1987) and Mr. Ashok Kumar learned counsel appearing for A2 (appellant in C.A.No. 141 of 1987) bristle to this :-

The warp and woof of fabric of story as projected by the prosecution, in the shape of evidence oral and documentary, is riddled with grave suspicion, as is not possible to safely rely upon such material and fasten or mulct criminal liability upon the appellants accused 1 and 2, as had been done by the court below and the best course to be adopted, on the facts and in the circumstances of the case, is that the appellant-accused 1 and 2 deserve to be acquitted, by setting aside the conviction and sentence, as had been imposed upon them by the court below, by giving them the benefit of reasonable doubt and thereby allowing both the appeals.

9. Mr. R. Raghupathi, learned Additional Public Prosecutor, would, however, strike a discardent note to such a submission as made by learned counsel appearing for the appellants.

10. We would now enter into the arena of discussion on the rival submission of either counsel, in the light of the facts and circumstances available in the case on hand.

11. The narration of the prosecution hinges upon the direct testimony of P.Ws. 2 and 3 and the circumstantial evidence in the shape of arrest, confession and consequent recovery effected as disclosed by the evidence of P.Ws. 8 and 14 of the direct testimony of witnesses, namely, P.Ws. 2 and 3, unfortunately for the prosecution, P.W. 3 turned hostile wholesale. No doubt, the prosecution brought on record his earlier version before the police in the manner allowed to law. But none the less, a witness like P.W. 3, who changed his version as and when he likes to do so, cannot at all be believed and though the resiled version of his had been brought on record in the manner allowed by law, yet the evidentiary value of such resiled version is practically 'nil' and therefore it is, we rather eschew his evidence totally out of consideration for any purpose whatever.

12. There remains the testimony of the other direct witness P.W. 2 as respects the occurrence. There is no pale of controversy at all that this witness had not been examined during the court of inquest and the persons examined during inquest were the none else than P.Ws. 1 and 5, who did not at all throw any light, as respects the manner and methodology of the occurrence and the part played by the accused 1 and 2. Though P.W. 2 was not examined during the course of inquest, yet P.W. 14 the Investigating Officer would make it appear that he was examined immediately after the despatch of the body for the purpose of autopsy. At this junction, we have to recapitulate it here that the inquest, according to the evidence of P.W. 14, was held between 9.00 A.M. and 12-00 noon. Puzzling a factor it is to note here that he has deposed in his evidence that he was contacted by P.W. 14 and in fact he was examined at 9.00 or 9.30 A.M. and if what is stated by P.W. 2 is true, then it goes without saying that he had been examined during the course of inquest.

13. We rather feel that there was telling circumstances available in the case on hand that P.W. 2 would not at all have been examined by P.W. 14 either during the course of inquest or subsequently thereafter. If he had been examined at the

time as stated by him, we are at a loss to understand as to how the verdict of the panchayathdars as recorded in column 9 of the inquest report Ex. P. 20 could reflect the possibility of the deceased having been done to death by Salaiya and Veerabhadran alias Thothan the son of one Subban and of animosity or embittered relationship towards the deceased. Further P.W. 2 could not have been examined immediately after the inquest was over. The reason is not far to seek. If he had been examined on the day of inquest, which event had happened on 17-4-1986, there could have been every possibility of Section 161 Cr.P.C. statement of his having been despatched to court along with the inquest report, which, as seen from the records had reached the court of the Judicial II Class Magistrate at 4.00 P.M. on the same day. Further, Exs. P3 to P7 reached the court on 26-4-1986. If the 161 statement of P.W. 2 had been recorded and was readily available at the hands of the Investigating Agency, plausible it is that such a statement atleast could have been despatched to the court along with Exs. P. 3 to P. 7. Alas' such a feat had not been performed by P.W. 14. The sordid fact is that 161 Statement of P.W. 2 had been despatched and the same had been recovered by the court on 6-8-1986 as revealed by the seal of court affixed to such a statement.

14. The further dismal feature is that we are unable to understand as to how P.W. 14 traced P.W. 2 as a witness acquainted with the occurrence. From a perusal of the evidence of P.W. 2, it is decipherable that he had contacted the Police on his own accord and consequently, the Investigating Agency was in a position to know that he was a witness acquainted with the occurrence. It is not as if P.W. 2 is not a witness of the locality. He had been virtually staying in a room at Indra Press itself in the vicinity of the scene of occurrence itself. The inquest had happened at the place of occurrence itself. Such being the case, it would have attracted the attention of the residents of the locality and such being the case, we are unable to comprehend as to how P.W. 2 could be keeping quiet without divulging as to how the occurrence happened to the Investigating Agency namely P.W. 14.

15. Further, his conduct is not above reproach and beyond suspicion. If he had really seen the occurrence, as deposed to by him, we are at a loss to understand as to his keeping mum and quiet without revealing the startling factors of accused 1 and 2 getting involved in the murder of the deceased even to the wife of the

deceased P.W. 1, when especially he is acquainted with the deceased. He had not even whispered or murmured as respects the assailants involved in the occurrence even to his employer or one else. He did not even go to the Police Station immediately after the occurrence for lodging an information. In view of dismal features associated with the testimony of P.W. 2, we are unable to place any safe reliance upon his testimony respecting the manner and methodology of the occurrence and the involvement of the accused 1 and 2.

16. Apart from the dismal features as pointed out above attaching to the testimony of P.W. 2, the Investigation rather appears to be slipshod and perfunctory, on the facts and in the circumstances of the case. As adverted to earlier, the investigating agency treaded initially on the path of the murder of the deceased having been perpetuated by Salaiya and Veerabhadran alias Thothan, the sons of Subban, the arch enemy of the deceased, as disclosed by Ex. P. 1 the earlier information lodged by P.W. 1. The matter did not stop there. During the inquest, the investigating agency also examined one Muthusamy and another Balan and on their examination, the investigating agency was able to gain the impression that the murder of the deceased could have been committed by Salaiya and Veerabhadran alias Thothan when especially both of them were seen running from the scene of occurrence by those two witnesses namely, Muthusamy and Balan as disclosed in column 9 of the inquest report under Ex. P. 20. The Investigating Agency though initially had come to such a conclusion, it did not at all whisper or say at any point of time that those two persons were not at all involved in the heinous crime of murder of the deceased. All of a sudden, the investigating agency pitched upon the appellants accused 1 and 2 as the real assailants in the case on hand obviously cased upon the testimony of P.W. 2 on whose testimony, we are unable to place any reliance, as not being above reproach and beyond suspicion.

17. There are also other be wildering and puzzling factors throwing grave suspicion, as respect the movements of the deceased in the company of accused 1 and 2 at or about the relevant time of occurrence. It is the evidence of P.W. 6 that A1 and A2 travelled in his cycle rickshaw at about 3.00 A.M. on the day of occurrence from Aranmanaikulam to Ganesh theatre situate at E. B. Colony. It is

not as if P.W.6 is acquainted with A1 and A2 even previous to their coming into contact with him on the day of occurrence. His testimony does not throw any light at all on such aspect. In the concourse of dealings with persons day-in-and-day-out, P.W.6 could have been coming into contact with many a person, who could have utilised his rickshaw for the purpose of travelling and he would not expected to remember them all, if the evidence of P.W.6 is perused with a little bit of care and caution, he would pose as if he was able to recapitulate his memory that both the persons travelled in his cycle rickshaw at 3.00 A.M. on the day of occurrence. He would straightway say that A2 engaged his auto-rickshaw at the relevant point of time, and while saying so, he would say that another person was bodily present along with him. He would not initially say that the person bodily present along with him was none else than A1 at a later stage he would say that such person was A1. In such a situation, we are unable to attach any credibility to the testimony of P.W.06 when he deposed that A1 and A2 were available in the vicinity of the scene of occurrence at about 3.00 A.M. on the day of the occurrence.

18. The so called incriminating circumstances as are getting revealed by the arrest, consequent confession under section 27 of the Evidence Act leading to recovery, as disclosed by the testimony of P.Ws.8 and 14 coupled with Exs. P3 and P-5 and the seizure of the so called blood stained clothes of A1 - M.Os. 14 and 15 and blood stained clothes of A2 - M.Os. 12 and 13 are of no use in advancing or improving the case of the prosecution to any extent whatever, when especially in knife M.O.I no blood had been detected, much less human blood and origin and group as that of the deceased, besides the non-detection of the blood group as that of the deceased in any of the clothes recovered from accused 1 and 2 as disclosed by the chemical examiner and serologist's reports, Exhibits P-13, P-17, P-18 and P-19.

19. It is the evidence of P.W.5 are employee of the arrack shop that the deceased visited the arrack shop at 5.00 A.M. on the day of occurrence for the purpose of consuming 50 ml. of arrack. After consuming arrack, it appears, the deceased went to the tea shop situate opposite to Ganesh theatre for the purpose of consuming a cup of tea, as disclosed by the testimony of P.W.4. While he was so sitting in the tea shop, he appeared to have entreated P.W.4 to procure some

more arrack for his consumption, to which course P.W.4 would turn a deaf ear and she would however, oblige him in purchasing a plantain from a shop situate near the arrack shop. The conduct of P.W.4 in refusing to oblige the deceased in procuring arrack cannot commend acceptance at our hands, when especially, she had obliged the deceased in procuring a plantain from a shop situate adjacent to the arrack shop. Further, it is not as if, the arrack shop is situate at a far off distance so that the the deceased could have utilised the services of any other person like P.W.4 for procuring arrack and he could have walked straight into the arrack shop for consumption of a little more arrack for his personal satisfaction.

20. It is, at this junction, we have to notice the evidence of P.W.5 as relatable to the wordy altercation or duel the deceased had with A1 and A2 in front of the arrack shop subsequent to his consuming arrack in the said shop in the company of the accused 1 and 2. P.W.5 appears to be a person more loyal than the King. He did not at all advert to the aspect of quarrel between the accused 1 and 2 and the deceased during the course of his examination under section 161 Cr.P.C. by the investigating agency. For the first time, he would state so during the course of trial, and such material omission amounting to a contradiction had been duly brought on record by the defence by not only putting questions to P.W.5 during the course of trial, but also the same had been elicited during the course of examination of the investigating Officer P.W. 14, who would in fact clinchingly admit that P.W.5 did not at all advert to or refer to the aspect of wordy altercation that took place in front of the arrack shop between the deceased and the accused 1 and 2 after the consumption of arrack by the deceased in the company of accused 1 and 2. Why we state all these things is that the anxiety of the prosecution is getting revealed by such testimony to make it appear that the deceased was available in the company of the accused at or about the relevant point of time of occurrence.

21. For the reasons stated above, we are of the view that the prosecution had not successfully established that it was the hand of the accused 1 and 2 that was responsible for causing the death of the deceased and in such a situation, we are not wrong in finding the appellants accused 1 and 2 not guilty of the offences with while they stood charged and acquitting them by giving them the benefit of

reasonable doubt by setting aside the conviction and sentence, as had been imposed upon them by the court below.

22. In fine, both the appeals are allowed. The conviction and sentence as had been imposed upon the accused 1 (appellant in C.A.No. 287 of 1987) under section 302 I.P.C. and accused No. 2 (appellant in C.A.No. 141 of 1987) under Section 302 read with Section 109 I.P.C. are set aside, and they are acquitted thereof by giving them the benefit of reasonable doubt. The bail bonds, if any executed by them shall stand cancelled.

23. Appeals allowed.

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