George Vs. State

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Court : Chennai

Decided On : Aug-14-1995

Reported in : 1996CriLJ1755

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 302, 307 and 341; Code of Criminal Procedure (CrPC) , 1973 - Sections 161(3), 172, 173(2) and 313

Appeal No. : Crl. App. No. 252 of 1987

Appellant : George

Respondent : State

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

Advocate for Pet/Ap. : N.P. Vannamamalai, Adv. for ;M/s. S. Ashok Kumar and ;S. Panneerselvan, Advs.

Judgement :

Janarthanam, J.

1. The appellant was the first accused in S.C. No. 8 of 1987 on the file of the Court of Session, Kanniyakumari Division, Nagercoil. He was found guilty of offences punishable under Sections 341 and 302 of Indian Penal Code, convicted

thereunder and sentenced to imprisonment for life under Section 302 of Indian Penal Code and simple imprisonment for one month under Section 341 of Indian Penal Code, with a direction for the sentences to run concurrently. The other accused, namely, the second accused was found not guilty of offences under Sections 341 and 302 read with Section 34 of Indian Penal Code, with which he stood charged and acquitted thereof.

2. Aggrieved by the said conviction and the sentence, the present action had been resorted to by the appellant-first accused.

3. Brief facts are :-

(a) The first and the second accused, brothers, are residents of Mandaikadu Puthur, situate within the jurisdictional limits of Manavalankurichi Police Station. They have been eking out their livelihood by catching fish in the sea. One Andrews (since deceased) had been assisting the first and the second accused, in their profession of catching fish in the sea.

(b) P.W. 3 is the sister of the first and the second accused. The deceased and P.W. 3, it appears, loved each other and consequently they decided to marry. Opposition emerged for such a marriage from the first and the second accused, apart from other family members.

(c) One year prior to the occurrence, which event happened on 3-10-1986, the services of the deceased in fishing operation had been dispensed with, with a view to sever his connection and intimacy with P.W. 3. The attempt so made by the accused ended in colossal failure, in the sense of the intimacy between the deceased and P.W. 3 growing thicker and thicker. This was not digested by the first and the second accused and it appears, they threatened the deceased with dire consequences on and often and despite issuance of such threats, the affair between the deceased and P.W. 3 continued, as before.

(d) On 3-8-1986 P.W. 3 happened to stay in the house of the first accused, situate in Middle street of the village. The deceased had been residing at the house of PW 1. At 8.00 a.m. on the day of the occurrence the deceased happened to pass

through the house of the first accused. At that time P.W. 3 was stated to be standing in front of the house of the first accused. The deceased was followed by his brother P.W. 1, P.W. 2, a neighbour was also stated to have passed through the said street, at that juncture, to attend some personal work. On sighting the deceased, the first and the second accused prevented him from proceeding further and, thereafter the first accused throttled his neck with his hands by preclaiming. At that time the second accused was stated to have beaten the deceased on his chest and back with his hands. Then both of them pushed the deceased down. The moment the deceased fell down, both the first and the second accused trampled on his chest. At that juncture the deceased was making a hue and cry. The first and the second accused ran away from there. The deceased was then lying unconscious. P.Ws. 1 and 2 then bodily lifted the victim-deceased towards the road side. A car happened to pass that way then. The services of the said car were requisitioned and in the said car the victim-deceased towards the road side. A car happened to pass that way then. The services of the said car were requisitioned and in the said car the victim-deceased had been taken to Manavalankurichi Police Station by P.Ws. 1 and 2.

(e) P.W. 5 was the then Sub-Inspector of Police Manavalankurichi Police Station. At 8.30 a.m. on 3-10-1986 while he was in charge of Police Station, P.W. 1 and P.W. 2 along with the victim-deceased appeared before him. Even then the victim-deceased was unconscious. Consequently, P.W. 1, gave a statement, which was reduced into writing by P.W. 5. After completion of the statement he read over the same of P.W. 1, who, in turn, admitted the same to be correct. Ex. P. 1 is the said statement, on the Strength of Ex. P. 1, he registered a case in Crime No. 140/86 under Section 307 of Indian Penal Code. Ex. 1.2 is the printed First Information Report. He then sent the victim-deceased through Constable bearing No. 262, along with the original of Ex. 1.7, medical memo to the Government Hospital, Kolachel, for the purpose of treatment. Ex. 1.8 is the Passport given to the said constable. He also prepared express reports and sent the same to the concerned officials through Constable, P.W. 6, who, in turn, handed over the copy of the express First Information Report intended to the Inspector of Police P.W. 9, at 9.30 a.m., besides handing over the tapal (sic) intended for the Judicial Second Class Magistrate's Court, Eranial at 11.00 a.m.

(f) In the mean time P.W. 4, the then Civil Assistant Surgeon attached to the Government Hospital, Kolachel, before whom the victim-deceased has been produced for examination at 9.15 am., found him dead. Ex. P. 3 is the death intimation. He then sent the body to the mortuary. It appears an information had been passed on to P.W. 5 as to the death of the victim-deceased at the hospital.

(g) P.W. 9, on receipt of the express First Information Report, rushed and reached the scene of occurrence, P.W. 5 was then available there and he, in turn, informed P.W. 9 as to the death of the victim-deceased. Immediately thereafter P.W. 9 rushed and reached the Government Hospital Kolachel at 10.45 a.m. He received death intimation Ex. P. 3 from the Government Hospital. He then immediately altered the case into Section 302 of Indian Penal Code, prepared and sent express reports to the concerned officials. He sent Ex. P. 9 express reports to the Court through Constable, P.W. 8.

(h) P.W. 9 then held inquest over the body of the deceased between 11.30 a.m. and 1.30 p.m. Ex. P. 10 is the inquest report. During inquest, he examined P.Ws. 1, 2 and others. After inquest, he sent a requisition Ex. P. 1 through the Constable, P.W. 7 for the purpose of autopsy.

(i) P.W. 4, Doctor, commenced post-mortem on the body of the deceased at 2.00 p.m. Ex. P. 5 is the post-mortem certificate. Ex. P. 6 is a note therein. He would opine that the deceased would appear to have died of hyoid bone fracture due to manual strangulation caused by considerable violence.

(j) At 2.00 p.m. after inspecting the scene, P.W. 9 prepared Ex. P. 11 observation Mahazar he also drew a rough sketch of the scene Ex. P. 12. He then examined P.W. 3 and others. He searched for the accused and they were absconding.

(k) On 4-10-1986 P.W. 9 examined the doctor P.W. 4 and other. On 23-10-1986 at 8.00 a.m. he apprehended the accused and then complied with the formalities of sending him to court for remand. After completing the formalities of investigation, he laid final report under Section 173(2) of Criminal Procedure Code before the then Judicial Second Class Magistrate, Eraniel on 9-1-1987, for alleged offences under Sections 341 and 302 read with Section 34 of Indian Penal Code, against

the first and second accused.

4. On committal, learned Sessions Judge Kanniyakumari Division, Nagorcoil, framed charges under Sections 341 and 302 of Indian Penal Code, against the first accused and the second accused was found not guilty of the offences under sections 341 and 302 read with Section 34 of Indian Penal Code with which he stood charged and acquitted thereof.

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

6. In proof of the charges so framed, the prosecution examined P.Ws. 1 to 9 and filed Exs. P. 1 to P. 12.

7. The first and second accused, when questioned under Section 313 of Criminal Procedure Code as respects the incriminating circumstances available in evidence against them, denied their complicity in the crime. They, however, chose to examine D.W. 1 on their behalf.

8. Learned Sessions Judge, on taking into consideration the materials available on record and after hearing the arguments of learned counsel for the defence and learned Public Prosecutor, however, rendered the verdict, as stated above.

9. Mr. N. T. Vanamamalai, learned Senior counsel appearing for the appellant/first accused would submit that the entire materials available on record in the shape of evidence - oral and documentary, if shifted and scanned in broad spectrum analysis with so much of care, caution and circumspection, could not at all point out that the prosecution successfully discharged its duty of proving the case against the appellant/first accused beyond any shadow of doubt and in this view of the matter, the case of the prosecution has to be thrown lock, stock and barrel, in the sense of acquitting the appellant/first accused by giving him the benefit of reasonable doubt, to which course Mr. R. Ragupathi, learned Additional Public Prosecutor, representing the respondent, would, however, strike a discordant note.

10. From the trend of the cross-examination of the so-called direct eye witnesses P.Ws. 1 to 3 and the testimony of D.W. 1, it is rather crystal clear that according to

the defence, the occurrence in question did not at all happen in the manner and methodology, as suggested by the prosecution and the deceased died of sucide hanging could not be termed as homicidal violence by strangulation, thereby implicating the appellant/first accused and the other acquitted second accused in such a heinous crime.

11. Irrespective of the defence taken, it is incumbent upon the prosecution to prove in a clinching fashion its case beyond any shadow of doubt and if the prosecution fails in its duty to do so, then it goes without saying that the prosecution has to meet a colossal failure the consequence of which is the appellant/first accused must have to be acquitted by setting aside the conviction and sentence imposed upon him by the Court below by giving him the benefit of reasonable doubt.

12. The motive for the offence, according to the prosecution, arose this way. The deceased, a fisherman, who was stated to be assisting the first accused in the operation of catching fish in the sea, was all of a sudden stopped from work by the first accused, some one year prior to the occurrence, as a consequence of the deceased having had some sort of friendly relationship with P.W. 3 - Sister of the first accused, obviously with a view to marry her. Such friendly relationship was not to the liking to the first accused and his brother second accused as well. It appears that the first accused had been issuing threats of dire consequences to the life of the deceased, in case he happened to continue his relationship with P.W. 3. On this aspect of the matter so mush of reliance had been placed on the testimony of P.W. 1 - the brother of the deceased P.W. 1, however, had positively stated in the course of chief-examination as to the threats of dire consequences being issued by the first accused to the deceased. When we turn to cross-examination, he would candidly admit and state that he did not know personally to any such threats having been issued by the first accused and he came to know of such threats having been issued by the first accused only from the general talk in the village.

13. Puzzling it is to note here that P.W. 3, the lady with whom the deceased was stated to have friendly relations, which was seriously objected to by the first

accused, did not at all whisper or murmur as to any threat of dire consequences having been issued by her brother-first accused to the deceased at any time prior to the time of occurrence. It is not at all the case of the prosecution that at any time prior to the time of occurrence either the deceased or his brother-P.W. 1, alarmed by the threats issued by the first accused, reported the matter to any of the elders in the village with a view to warn or restrain the first accused from causing any imminent danger to the life of the deceased. In such circumstances, we are of the view that the imminent threat stated to have been issued by the first accused to the life of the deceased, some time prior to the time of occurrence, cannot be any other than the one trotted out at the deft hands of the investigation agency, so as to serve as a motive or igniting cause for the occurrence.

14. Coming to the occurrence proper, according to the prosecution, it took place at 8.00 a.m. on 3-10-1986 in front of the house of the first accused, when the deceased came to pass that way. The deceased was then stated to have been prevented from proceeding further by the first accused and his brother-second accused and the first accused was stated to have throttled the neck of the deceased saying that he should not be allowed to live any longer, while the second accused was stated to have beaten the deceased with his hands on his chest and back. Thereafter, both of them were stated to have pushed down the deceased. The moment the deceased fell down on the ground, both the first and second accused were stated to have trampled on his chest and as a consequence of such throttling and trampling the deceased was stated to have become unconscious. This sort of an occurrence was stated to have been witnessed by P.Ws. 1 and 2, apart from P.W. 3.

15. P.W. 1, as already stated, is none other than the brother of the deceased. According to him, at or about the time of occurrence, the deceased left the house and passed through the house of the first accused and P.W. 1 also was stated to have followed the deceased. There was no rhyme or reason for P.W. 1 to have followed the deceased, on the facts and in the circumstances of the case. It is not at all the case of P.W. 1 that he had some errand to do in the middle street, through which the deceased was stated to have passed at the relevant point of time. This apart no untoward incident had happened in the recent past, creating

danger to the life of the deceased at the hands of either the first accused or his brother-second accused, so that P.W. 1 could have had some vista vision of clairvoyance of mental eye that there was every likelihood of the deceased facing danger at the hands of either the first accused or the second accused, when he happened to pass through the middle street, where the first and second accused had been living.

16. Worthy it is to note at this juncture that P.W. 1 would not state in the earliest information Ex. P. 1 that his brother - the deceased told him that he was going towards the road, obviously meaning the street in which the first and second accused had been living and consequently he had also followed him. P.W. 1 had been confronted with this aspect of the matter by putting relevant questions in the course of cross-examination by the defence and to such questions, P.W. 1 had the audaucity temerity and guts to say that the deceased had told him so before he departed from his house, although such aspect of the matter is not reflecting the reality of the situation, in the sense of P.W. 1 not having stated so either in Ex. P. 1 - earliest information or during the course of his earlier version under Section 161(3) of Criminal Procedure Code statement. This sort of an information had been given by P.W. 1, we rather feel, with an obvious purpose of explaining his otherwise inexplicable presence in the scene of crime.

17. If really P.W. 1 had been bodily present in the scene of occurrence at or about the time of occurrence, he could have gone to the rescue of his beloved brother the deceased, when especially the deceased was facing an onslaught of attack at the hands of the accused 1 and 2 causing nearly danger to his life. It is not as if the first and second accused were mounting an attack on the person of the deceased with any dangerous arms and the weapons of attack they used were only their 'arms', namely 'hands'. If the first and second accused were in possession of lethal weapons and were making frontal attacks on the person of the deceased, it could be stated that P.W. 1 daunted by the instinct of self-preservation would not have gone anywhere near the first and second accused, when they were mounting an attack on the person of the deceased undeterred. As already adverted to, it is not a case of that sort. Being conscious of such a criticism to be made perhaps, the prosecution thought it fit to introduce through the mouth

of P.W. 1, during the course of trial in his chief-examination that he and P.W. 2 went to the rescue of the deceased and separated him from the first and second accused. Such an evidence of P.W. 1 got exploded during the course of cross-examination and what he would say therein was that he did not go anywhere near accused 1 and 2 at the time of occurrence in (sic) a bid to save the life of his beloved brother the deceased.

18. The presence of P.W. 2 as well as P.W. 3 in the scene at the time of occurrence is rather doubtful, on the facts and in the circumstances of the case. P.W. 2 who had no business to pass through the middle street at the time of occurrence, would rather try to explain his presence there by stating that he had passed through the middle street to go to the house of his sister for the purpose of taking loan from her. This aspect of the matter, had not at all been stated by him during the course of his examination under Section 161(3) of Criminal Procedure Code, as candidly admitted by the Investigating Officer P.W. 9.

19. Likewise, there was no opportunity at all for P.W. 3 to have been present in the middle street at or about the time of occurrence in front of the house of her brother-first accused. It is not the case of the prosecution that P.W. 3 had been staying in the house of her brother-first accused and she had been staying along with her parents in a different house. As she was present in the scene of occurrence, evidence had been let in through the mouth of P.W. 3 that she had been staying in the house of the first accused at the time of occurrence. The defence, during the course of her cross-examination, controverted that aspect and put a positive question that she had not been staying in the house of her brother-first accused at the time of occurrence and in fact had been staying in the house of her parents. To such a question, P.W. 3 positively answered that she had been staying in the house of her brother-first accused alone. But alas, during the course of her examination under Section 161(3) of Criminal Procedure Code, she had positively stated that she is residing along with her parents at the time of occurrence and this aspect of the matter had been duly proved in the manner allowed by law when the Investigating Officer-P.W. 9 was in the box.

20. Both P.Ws. 2 and 3 followed the foot steps of P.W. 1, in the sense of not taking any steps in preventing the onslaught of attack made by the first and second accused towards the deceased. We can neither appreciate the conduct of P.W. 2 nor P.W. 3 in such a situation. If really P.W. 2 had been present in the scene, he would have gone to the rescue of the deceased, so as to avoid any risk or harm being caused to the deceased at the hands of the first and second accused, when especially both the first and second accused were not armed with any dangerous weapon to attack on the person of the deceased. P.W. 3 being the lady love of the deceased, despite the opposition emerging from her brother-first and second accused, could not have remained as a silent spectator, when especially the deceased poured on her so much of love, at the time of onslaught of attack at the hands of the first and second accused. This sort of conduct of P.W. 3 spells volume of doubt as to her presence in the scene.

21. It is the evidence of P.Ws. 1 and 2 that immediately after the occurrence they lifted the victim-deceased, then found in an unconscious state on the road and put in a car that came that way and took him to the police station initially and subsequently to the Government Hospital at Kolachel. It is further the case of the prosecution that a Constable bearing No. 262 had been sent along with the original of requisition Ex. P. 7 and pass port Ex. P. 8, along with the deceased and P.Ws. 1 and 2 to the Government Hospital, Kolachel, in a bid to save his lingering life. This sort of a case of the prosecution is thrown out lock, stock and barrel by the Doctor - P.W. 4, who happened to examine the victim-deceased at 9.15 a.m. on the day of occurrence. He would positively assert that the victim-deceased was brought to the hospital by two or three persons and no police memo has been sent to him and on examination, he found the victim dead and thereafter he sent Ex. P. 3 death intimation to P.W. 5 the Sub-Inspector of Police, Kolachel Police Station. If really the Constable bearing No. 262 had been sent along with the victim-deceased to Kolachel Government Hospital, along with the original of Ex. P. 7, certainly, a duty is cast upon the prosecuting agency to confront the doctor - P.W. 4, while he was in the box as to original Ex. P. 7 memo having been sent along with the body of the deceased to the hospital. The prosecuting agency did not at all do that.

22. The Doctor-P.W. 4 was admittedly examined on 1-4-1987. The Sub-Inspector - P.W. 5, who had handed ovver the original of Ex. P. 7 and P. 8 to the Constable bearing No. 262 with a direction for the body of the victim - deceased to be taken to the Government Hospital, Kolachel, for the purpose of examination and further treatment, had also been examined on 1-4-1987 subsequent to the examination of the Doctor - P.W. 4. Admitted a fact it is, Exs. P. 7 and P. 8 had seen the light of the day only on 1-4-1987, the date of examination of the Doctor - P.W. 4 and Sub-Inspector - P.W. 5 as well. Normally, the original memo sent by the Police authorities to the Doctor for the purpose of examination and treatment of the victim would be marked as an exhibit during the course of trial. In the case on hand, by way of a reiteration it may be stated, the prosecution did not adopt such a procedure at all. It is only the so-called duplicate copy of memo sent to the Doctor - P.W. 4 that had been marked as Ex. P. 7, that too on the date of examination of P.W. 4 and P.W. 5.

23. Bewildering a fact it is to note, as already stated that the Doctor - P.W. 4 not only, was not at all confronted by the prosecuting agency, when he had stated that he had not at all received any police memo for the examination of the deceased but what is further worse is that Ex. P. 7 which is stated to be containing the initial of the Doctor, to whom the body had been sent for the purpose of examination, was not at all shown to the Doctor - P.W. 4 when he was in the box. Further in order to satisfy our conscience, when we verified the Diary under Section 172 of the Criminal Procedure Code, we are able to find that no reference had been made therein as to any police memo having been sent along with the deceased, through the Police Constable to the Government Hospital, Kolachel, for examination and treatment of the victim-deceased and what all had been stated therein is that the victim-deceased had been taken to the Hospital and on the way, the victim-deceased died. It is at this juncture, we have to take note of the death intimation Ex. P. 3 and according to which the Doctor - P.W. 4, had stated that the victim-deceased had been brought to the hospital by P.W. 1 and one Anthony Sami - D.W. 1.

24. Further the victim-deceased had been taken initially to the Police Station and then subsequently to the Government Hospital, Kolachal by a car that came

accidentally that way immediately after the time of occurrence. Shocking to note it is, that if really the victim-deceased had been taken in a car, definitely P.W. 5 - the Sub Inspector of Police would have examined the driver of the said car and noted down its registration number. Leave alone the non-examination of the doctor and noting down of the registration number of that car, neither P.W. 1 nor P.W. 2 would be in a position to specify or state the details as relatable to the name of the case of driver and its registration number. In such state of affairs, we are not far wrong in coming to the conclusion that PWs. 1 and 2 could not have taken the victim-deceased to the police station initially and then subsequently to the hospital in a car and perhaps, assisated by the defence, the victim-deceased could have been taken by D.W. 1 and P.W. 2 initially to Naiyur Hospital and subsequently to Kolachal Government Hospital with a view to have the post-mortem performed on the body of the deceased so that the last rites could be performed by the priest, without any sort of hesitation, on the body of the deceased and only surmount to the receipt of the death intimation - Ex. P. 3 the wheels of investigation could have taken a move in the matter.

25. It is not as if the occurrence took place in wilderness not have any human habitation. Admittedly, the occurrence took place in the middle street of the village, where there are number of houses. It is also the evidence of P.W. 1 that adjacent to the scene of occurrence, there is a tap located in the street and at the said tap, row of utensils would be placed in a queue for taking water from the said tap and this sort of water taking operation would take place right from 7.00 a.m. to 11.00 a.m. every day. Having admitted such a factor P.W. 1 would try to wriggle out of the situation by stating that on the day of occurrence the said tap was not in a working condition and consequently none came for taking water from the tap. This sort of a convenient and contumacious explanation by P.W. 1, no rather fee, is noting but an explanation to get over the situation.

26. The medical testimony available in the shape of Doctor - P.W. 4, coupled with Ex. P. 5 Post-mortem certificate, cannot at all to be stated to land assurance to the projection of a version respecting the manner and methodology of occurrence by the direct witnesses - P.Ws. 1 to 3. Though the direct testimony of witnesses is positive of the factum of the deceased having been beaten black and blue on the

chest and back, besides being throttled on his neck by both the accused, no trace of injury on any of the portions of the body had been found by the Doctor-P.W. 4. It is true that in Ex. P. 5 post-mortem certificate, no trace of external injury on any parts had been described therein.

27. It is the case of the prosecution that the death of the deceased was due to to throttling. To the theory of throttling, as propounded by the prosecution, the medical testimony available on record is not lending any support. The Doctor-P.W. 4 did not at all find any finger mark on the neck. The only finger mark, the said Doctor was able to find was a nail mark, in respect of which no description had been given in Ex. P. 5. Even there is volume of suspicion as to the presence of such a nail mark without description as having been found by the Doctor, on the facts and in the circumstances of the case. When we perused the original of Ex. P. 5 post-mortem certificate, we are able to find the expression 'except nail marks and swelling' being interlineated after the espression 'injuries seen on the body.' When we further scrutinised the post-mortem notes, a contemporaneous document, it has been written therein at page 5 as below :

'No external injury seen on the body except role mark and swelling in the right side of the neck.'

The medical evidence available on record, as such cannot at all be stated to advance or improve the case of the prosecution to any extent whatever in the sense of lending any corroborative support to the testimony of the direct witness-P.Ws. 1 to 3.

28. For the reasons above, we are of the view that the prosecution faced colossal failure in proving its case beyond any shadow of doubt as respects the appellant/first accused, the consequence of which is there is no other go for us except to acquit the appellant/first accused by giving him the benefit of reasonable doubt and finding him not guilty of the offence with which he stood charged, thereby setting aside the conviction and sentence, as had been imposed on him by the Court below.

29. In fine, the appeal is allowed. The conviction and sentence as had been imposed upon the appellant/first accused under Section 302 and 341 of the Indian Penal Code are set aside and he is acquitted thereof by giving him the benefit of reasonable doubt. The bail bond, if any, executed by him, shall stand cancelled.

30. Appeal allowed.