

Krishnaswami Alias Chinnu Vs. the State

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Court : Chennai

Decided On : Jan-13-1996

Reported in : 1996CriLJ3372

Judge : M. Karpagavinayagam and ;T.S. Arunachalam, JJ.

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

Appeal No. : Crl. Appeal No. 409 of 1987

Appellant : Krishnaswami Alias Chinnu

Respondent : The State

Advocate for Def. : I. Subramaniam, Addl. Public Prosecutor

Advocate for Pet/Ap. : V. Gopinath, Sr. Counsel, for ;S. Ashok Kumar

Judgement :

Arunachalam, J.

1. Appellant Krishnaswami alias Chinnu was the sole accused in Sessions Case No. 20 of 1987 on the file of the Principal Sessions Judge, Coimbatore. He was charged under Section 302, IPC on the allegation that at or about 11.00 p.m. on 16th January, 1986, near Vinayagar temple, adjacent to the house of one

Palaniswami, situated at Bangalowmedu, he caused the death of deceased Rajendran, by stabbing him with a knife on his abdomen, neck, etc. On conclusion of trial, appellant was found guilty as charged and sentenced to undergo imprisonment for life.

2. The case of the prosecution as disclosed from the evidence brought on record, is as follows : P.W. 5, Chinnaswami, a resident of Mettupalayam, is the father of deceased Rajendran. P.W. 1, Subramaniam, P.W. 2, Sivanandam, P.W. 3, Chandran, P.W. 4, Arumugham, and the appellant were residents of Rajapuram, near Methupalayam. About 15 years ago P.W. 5 purchased 1.6 acres of land from Thiru Mooppa Gounder, father of the appellant. The said land is surrounded on all sides by the lands belonging to the appellant and his father-in-law Nanjayyan. It appears that it was not properly measured, at the time of sale. On the ridge, adjacent to this land, there was a margosa tree. Deceased Rajendran cut the branches of the tree for using the same as firewood. In retaliation, appellant's father, cut five or six plantain trees, situated in the field of P.W. 5. Therefore, there was misunderstanding between the families of the deceased and the appellant. While, so, at or about 5.30 p.m. on 16th January, 1986, the occurrence day, there was a wordy altercation between the appellant's father and father-in-law on the one side and P.W. 5 on the other. At or about 9.30 p.m. deceased Rajendran left his house with a view to prefer complaint at the police station, in relation to the incident, that had occurred in the evening.

3. P.W. 4, Arumugham, was coming back home from his brother's house at Bangalowmedu at or about 11.00 p.m. on the night of occurrence. Near Vinayagar temple, he noticed Rajendran, who requested him to take him as a pillion-rider, on his cycle, to be dropped at Bangalowmedu. P.W. 4 obliged. P.Ws. 1 and 2 were coming towards P.W. 4 from opposite directions. P.W. 3 was following P.W. 1, P.W. 4, who was taking the deceased with him, overtook these two witnesses, pedalling his cycle. Street lights were then burning. At that juncture, suddenly, the appellant emerged from the western direction, pulled down Rajendran from the cycle and exclaimed 'if Rajendran was a big rowdy in the village and only if he was done to death, problems will be solved'. So saying, appellant suddenly whipped out a knife from his waist and stabbed on the abdomen, and neck portion of the

deceased, a few times with M.O. 1, knife. Injured Rajendran fell down screaming. Appellant continued to attack the fallen down victim. P.W. 4 shouted. P.Ws. 1 to 3 also converged towards the venue of crime. Appellant fled away westwards with the weapon of offence. P.Ws. 1 and 2 procured an autorickshaw and escorted injured Rajendran to Government Hospital, Mettupalayam, where he was declared dead by Dr. Mohandass (not examined). However, P.W. 7, Dr. Karunanidhi, who was acquainted with the hand-writing and signature of Dr. Mohandoss has affirmed that Exs. P. 7 and P. 8 are in the handwriting of Dr. Mohandoss, who had signed them as well. Ex. P. 7 is a copy of the accident register, prepared by Dr. Mohandoss and Ex. P. 8 is the death intimation, forwarded by him, to the police.

4. In the meantime, P.W. 4 at 11.40 p.m. orally reported about the occurrence to P.W. 10, Rajamanickam, then Sub-Inspector of Police, Mettupalayam. The oral complaint of P.W. 4 was reduced into writing by P.W. 10 and on Ex. P. 1 so recorded, he registered Crime No. 16 of 1986 under Section 302, IPC. Ex. P. 13 is the printed express first information report. Ex. P. 1 and a copy of Ex. P. 13 were despatched to Judicial Second Class Magistrate, Methupalayam, while copies of Ex. P. 13 were forwarded to higher police officials.

5. P.W. 11 Gandhi, Inspector of Police, Mettupalayam, on receipt of the first information report, took up investigation and reached the scene of occurrence at 5.30 a.m. where he prepared Exs. P. 14 and P. 15, observation mahazar and scene sketch respectively. He recovered blood-stained earth, M.O. 8, and sample earth, M.O. 9, from the scene under mahazar, Ex. P. 16. Thereafter P.W. 11 proceeded to the Government Hospital, Mettupalayam, and conducted inquest over the corps of Rajendran between 8.00 a.m. and 11.15 a.m. during the course of which he examined P.Ws. 1 to 5. Ex. P. 17 is the inquest report. After inquest, he despatched the dead body through police constable Subramaniam (P.W. 8), with a requisition, Ex. P. 5, to Dr. Karunanidhi, P.W. 7, for the conduct of post-mortem.

6. P.W. 7, Dr. Karunanidhi, commenced autopsy on the dead body of Rajendran at 1.50 p.m. on 17-1-1986 and found the following injuries :

1. An incised wound $3/4'$ x $1/4'$ present in the left side abdomen, about $2\ 1/2'$ above and lateral to the umbilicus. On dissection it was found to enter the peritoneal cavity. Fluid blood present in the peritoneal cavity.

2. An incised wound of about $1'$ x $1/2'$ x $1/2'$ size present in the left side neck about $2'$ below and medial to the left ear.

3. An incised wound of about $3/4'$ x $3/4'$ present in the right side back near the midline at the upper border of the scapula (right).

On dissection, a lacerated wound present in right upper lobe of the lung, size about $1\ 1/2'$ x $3/4'$.

4. An incised wound of about $1'$ x $1/4'$ size present in right side back about $3'$ below the injury No.3.

5. An incised wound of about $3/4'$ x $1/4'$ size present in left side back about $3'$ below the upper border of scapula (left and medial border of scapula (left).

6. An incised wound in left side back; size about $3/4'$ x $1'$ about $2'$ below and medial to the angle of scapula (left).

One dissection two lacerated wounds present in the left side lung, one in upper lobe and the other in lower lobe posterior aspect, each measuring about $3/4'$ x $1'$ x $1'$. Both the lungs collapsed. Fluid blood present in the pleural cavity. Skull normal. Brain congested. Peritoneal cavity contained fluid dark blood.

In the opinion of the doctor, death could be due to multiple injuries on the back, causing pneumothorax and haemothorax, leading to respiratory and cardiac arrest about, 14 to 18 hours prior to conduct of autopsy.

All external injuries were possible by stabbing with a knife. External injuries 3 and 6, with the corresponding internal injuries, were necessarily fatal. Ex. P. 6 is the post-mortem certificate.

7. At 6.00 a.m. on 18-1-1986, P.W. 11 arrested the appellant opposite to the Taluk Office situated at Sinumugai Road, in the presence of P.W. 6, Sivalingam.

Appellant volunteered a statement, the admissible portion of which is Ex. P. 2. In pursuance of his statement, appellant escorted P.W. 11 and others to a dilapidated building near Masaniamman temple and produced from a bush nearby, M.O. 1, knife, which was seized under mahazar, Ex. P. 3. The blood-stained shirt, M.O. 2, and lungi M.O. 3 then worn by the appellant, were also seized under mahazar, Ex. P. 4, attested by P.W. 6, Sivalingam. Appellant was duly produced for remand. P.W. 11 forwarded the material objects seized during investigation, for chemical analysis, through the Magistrate, Exs. P. 11 and P. 12 are the reports of the Chemical Examiner and Serologist respectively. P.W. 11 could not continue further investigation, in view of his transfer. However, his successor, Gopal (not examined) verified the investigation already conducted by P.W. 11 and laid the final report on 3-10-1986.

8. When the appellant was examined under Section 313, Cr.P.C. to explain the incriminating circumstances appearing against him in evidence, while reiterating his innocence, went on to add that while he was sleeping at his residence, the police arrived at 12.00 midnight and took him away. According to him, he did not stab deceased-Rajendran and a false prosecution had been initiated against him. No evidence in defence was adduced.

9. Learned trial Judge, on assessment of oral and documentary evidence accepted the prosecution case, rejected the defence and dealt with the appellant as stated earlier.

10. Mr. V. Gopinath, learned Senior Counsel, representing the appellant, contended that the motive portion of the prosecution case was not accepted by the learned trial Judge and so the recovery of M.Os. 2 and 3 which in the opinion of the trial Judge, appeared unnatural. He submitted that there was no reference to P.Ws. 2 and 3 in the first information report and hence they cannot be readily accepted as eye-witnesses. He also submitted that antecedents of P.W. 2 elicited in cross-examination, would suffice to discard his evidence.

11. Mr. I. Subramaniam, learned Additional Public Prosecutor, while countering the submissions made by appellant's learned counsel, contended that P.W. 4 was a natural witness and his evidence, coupled with the version of P.W. 1, would suffice

to uphold the conviction for murder, even if, for any reason, the versions of P.Ws. 2 and 3 stand eschewed only on the ground of non-mention of their names in the first information report. He further pointed out that there was immediate motive for crime commission, since the evening occurrence had led to the deceased, proceeding to the police station to prefer a complaint, against the appellant's father and father-in-law.

12. We have carefully considered the arguments advanced by counsel on either side, after perusing the evidence brought on record. Appellant was known to P.Ws. 1 to 4 as a co-resident of their village and hence the identity of the appellant, if he was involved in the crime, cannot pass any problem. Similarly, all these witnesses had known deceased Rajendran also, on identical reasons. As far as the motive is concerned, we have the evidence of P.W. 5 alone. That P.W. 5 had purchased lands from the father of the appellant several years ago, is not a matter in dispute. P.W. 5 is none other than the father of the deceased. Merely because the land was not properly measured, about 15 years ago, it cannot be held that animosity had still survived for such a length of time between the parties. However, the evidence of P.W. 5 cannot be easily brushed aside, when he states that the deceased cut branches of a neem tree situated on the ridge, to be followed by the appellant's father cutting away five or six plantain trees situated in his land. At 5.30 p.m. on the occurrence evening, there was a wordy altercation between P.W. 5 on the one side and father and father-in-law of the appellant on the other side. It was this incident, which had provoked the deceased to proceed to the police station, at or about 9.30 p.m. with a view to prefer a complaint. As rightly contended by the learned Additional Public Prosecutor, it can be taken that there was a proximate cause for the commission of this crime. P.W. 5 has not been cross-examined regarding the incident that had occurred at 5.30 p.m. on that fateful evening. We have no hesitation in holding that on the occurrence evening, preceding the murderous occurrence proper animosity had developed between the prosecution party and the appellant and that had resulted in the unfortunate death of the deceased. We are unable to accept the reasoning of the learned Sessions Judge, that the proximate motive cannot also be accepted, merely because there was some delay in the deceased attempting to proceed to the police station to prefer a complaint. It is possible to visualise, that the occurrence was not so

serious and naturally, after the opposite party, who had quarrelled, left away, P.W. 5 and his son, the deceased, had decided to set the law in motion, to prevent unnecessary skirmishes later. We do not find anything artificial in the deceased having attempted to proceed to the police station at or about 9.30 p.m. on that night. All said and done, Law is clear, that if ocular version is acceptable, the motive aspect will stand relegated to the background. Even assuming that the motive was not strong enough, that cannot militate against accepting the prosecution case, if the eye-witness account is trustworthy and satisfactory, leaving an indelible impact about its truthfulness.

13. Now, let us scrutinise the evidence of eyewitnesses. It will be better to consider the evidence of P.W. 4, Arumugham, initially, since it was he who had set the law in motion. As we have already stated, P.W. 4 is a resident of Rajapuram, to which the deceased and the appellant belonged, apart from the other eye-witnesses. He has given out in his evidence the purpose for his presence near the scene of crime on that particular night, He had gone over to the house of his elder brother situated at Bangalowmedu to obtain his salary. His presence, therefore, at the scene, cannot be easily doubted. If P.W. 4 had seen the deceased whom he had already known, there is nothing surprising in the deceased having asked him to pedal him on his cycle to Bangalowmedu. It was then that the appellant suddenly emerged and pulled out a knife vowing vengeance against the deceased before inflicting several stabs, even after he had fallen down face downwards. He has clearly spoken about the presence of P.Ws. 1 and 2 at the scene and injured Rajendran having been taken from the venue of crime by them to the hospital. That P.W. 1 must have accompanied injured Rajendran to the hospital, is affirmed by the entry made in Ex. P. 7, a copy of the accident register, that the person who brought the victim was P.W. 1. Subramaniam. In Ex. P. 1, preferred by P.W. 4 at the police station at 11.45 p.m. within about 45 minutes of crime commission, he has mentioned about the presence of P.W. 1 and another at the scene, who escorted injured Rajendran to the hospital. From the evidence of P.W. 4, coupled with the contents of Ex. P. 1, it is clear that, apart from others, P.Ws. 1 and 4 are certain ocular witnesses to the crime committed by the appellant. P.W. 4 has denied that his occupation was selling of cinema ticket in theatres, for extra money. According to him, he was a seller of sweets. He had admitted not having

mentioned the names of P.Ws. 2 and 3 in the first information report, as those present at the scene, though he had known them very well. In the cross-examination of P.W. 4, nothing adverse has been elicited to cast any doubt on his veracity. Further, his version is fully in tune with the contents of Ex. P. 1, which had its genesis without delay and within a very short time, on the occurrence night. We have no hesitation, whatever, in accepting the evidence of P.W. 4 as true and trustworthy.

14. We will then consider the evidence of P.W. 1, since his name finds a place in the first information report. He was employed as a porter in Civil Supplies Corporation, Mettupalayam and he was on his way to take tea at Bangalowmedu, at or about the time, when this occurrence had taken place. He saw at the point of time deceased-Rajendran on the carrier of the cycle, peddalled by P.W. 4. He has spoken about availability of electric street lamp. P.W. 4 and the deceased had actually crossed him and it was at that point of time that he was able to see the appellant suddenly emerging from the northern direction, crossing him over and pulling the deceased off the cycle before vowing words of vengeance and stabbing him with a knife, pulled out from his waist. He has also mentioned about the initial stabbing on the abdomen and neck, resulting in the deceased falling down face downwards and continuance of further attack by the appellant on the fallen down victim. He has mentioned about the presence of P.Ws. 2 and 3 at the scene. According to him, it was P.W. 2 who had accompanied him in the autorickshaw, while he escorted the deceased to the hospital. It has been elicited from his examination-in-cross, that he had known the appellant and the deceased almost from their infancy. He was not rightly aware as to where from P.W. 4 and the deceased had joined, and were coming together. He was able to fix the venue of crime was near the Vinayagar Temple, adjacent to M.P.P. Bangalow. Except a bare suggestion, not substantiated, and denied too by P.W. 1, that he, P.W. 4 and the deceased were rowdies of Mettupalayam, nothing worthwhile has been brought on record to suspect his credibility. To reiterate, it was P.W. 1 who had taken the injured victim to the hospital and his presence stands affirmed by the earliest document. We have no hesitation in accepting the version of P.W. 1, which, in effect corroborates the evidence of P.W. 4.

15. Let us now proceed to analyse the evidence of P.Ws. 2 and 3. It is not the law, that the versions of eye-witnesses, not mentioned in the first information report, will have to be necessarily thrown out on that score alone. It may be, the first informant might or might not have noticed all the persons who had seen the occurrence. The non-mention of certain eye-witnesses in the earliest document, will have to be considered in the light of several circumstances, which the prosecution or defence may be able to bring on record. If we take the evidence of P.W. 1, which we have accepted, then the presence of P.Ws.2 and 3 at the scene gets fixed. However, it has been elicited from P.W. 4 with cross reference to the Investigating Officer, that during investigation, he has stated that he enquired and noted down the name of P.W. 3, Chandran. If P.W. 3, according to P.W. 4, was known to him as a co-resident of Mettupalayam, much earlier, it does appear odd that he has stated differently during investigation. Though, on the basis of evidence of P.W. 1 his presence appears probable, we are of the opinion that it will be safer to exclude the evidence of P.W. 3 from consideration in view of the serious infirmity pointed out, on his identity, from the evidence of P.W. 4. We must also add that P.W. 3 himself has admitted that he and the deceased were known to each other very well, since they were neighbours. Though his substantive evidence prima facie has enough credence attached to it, for the reasons stated by us earlier, we will rather eschew his version from consideration.

16. Let us now assess the merit of P.W. 2's evidence. He has virtually corroborated the manner in which the occurrence had taken place, as spoken to by P.Ws. 1 and 4. His antecedents, of course, do not bring him any credit, since he was released from jail, after undergoing sentence, only on the earlier Saturday. He has also admitted that there was a prosecution for pick-pocketing against him and he was then on bail. Though P.W. 2 claims to have known P.W. 4 from his boyhood, P.W. 4 had omitted to mention his name in the first information report. Merely because P.W. 2 has bad antecedents, that alone would not suffice to reject his version, more so when his presence stands fixed by the evidence of P.W. 1. Even then, in our opinion, it will be better to exclude the version of P.W. 2 also from consideration in view of his not having been mentioned as an ocular witness in the first information report. Not that we are doubting the substantive evidence of P.Ws. 2 and 3, but on the parameter of safeness to the accused, we have chosen

to exclude their versions.

17. The evidence of P.Ws. 1 and 4 alone, which we are prepared to accept in totality would suffice to point out the appellant and the appellant alone as the assailant of the deceased. We have the medical evidence furnished by P.W. 7, Dr. Karunanidhi, which confirms the occurrence having taken place in the manner portrayed by these two eye-witnesses. The medical opinion is one more plus point in favour of the prosecution fully affirming the ocular evidence.

18. Recovery of blood-stained M.Os. 2 and 3, worn by the appellant at the time of his arrest, was not acceptable to the learned trial Judge. The reason is that the appellant would not have been parading himself with the blood-stained clothes, even two days after crime commission. However, recovery of M.O. 1 at the instance of the appellant, can admit of no doubt. M.O. 1 contained the same group of blood, as that of the deceased. This is one more circumstance, which clinches the prosecution case against the appellant. Mr. V. Gopinath, appellant's learned counsel, fairly stated that if the versions of P.Ws. 1 and 4 were found to be acceptable, he will not be able to challenge the correctness of the verdict of the learned trial Judge.

19. We are satisfied that the appellant has been rightly found guilty of murder. We do not have a different view to take. Conviction and sentence imposed on the appellant under Section 302, IPC shall stand confirmed. This appeal is dismissed.

20. Appeal dismissed.