

Thyagarajan Vs. State Rep. by the Inspector of Police, Thanjavur Rural

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Court : Chennai

Decided On : Jul-25-1995

Reported in : 1996CriLJ1304

Judge : A.R. Lakshmanan and ;J. Kanakaraj, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 323 and 352; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154(2) and 313; Evidence Act - Sections 27

Appeal No. : Criminal A. No. 771 of 1987

Appellant : Thyagarajan

Respondent : State Rep. by the Inspector of Police, Thanjavur Rural

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

Advocate for Pet/Ap. : M. Karpagavinayagam, Adv.

Judgement :

A.R. Lakshmanan, J.

1. The 1st accused in Sessions Case No. 160 of 1985 on the file of the Sessions Judge, West Thanjavur, is the appellant in this appeal. He has been convicted by the learned Sessions Judge for an offence under Section 302, I.P.C., and

sentenced to Imprisonment for life.

2. There were two accused in this case. Charges were framed against both the accused for an offence under Section 352, I.P.C., and against the appellant under Section 302, I.P.C. The 2nd accused Subbaiyan died during trial. The trial Court on the basis of the evidence adduced, found the 1st accused/appellant not guilty of the offence under Section 352, I.P.C., but guilty of the offence under Section 302, I.P.C., and convicted and sentenced him as indicated above.

3. The short facts leading to the occurrence are as follows :- The appellant and the 2nd accused Subbaiyan are brothers. They are residents of Gorikulam in Thanjavur Taluk. The deceased Dhanapal, P.W. 5 Shanmugham and P.W. 6 Munuswami are brothers. P.W. 3 Lalitha is their sister. P.W. 1 Selvi is the wife of P.W. 5 P.W. 2 Devaki is the wife of the deceased Dhanpal. They are all residing in the same place. According to the prosecution, both the deceased and the accused were originally doing illicit arrack business and discontinued the same due to misunderstanding. On 5-6-1985 at about 3-30 p.m., P.W. 6., and accused, one Subramanian and the appellant were playing cards in the appellant's house. At that time the deceased came there and questioned the appellant as to why his brother P.W. 6 was brought there to play cards with them. Thereupon, P.W. 6 left the place and went to his house. According to the prosecution, this has resulted in a wordy quarrel between the appellant and the deceased.

4. On the same day at about 4-00 p.m. P.W. 1 wife of P.W. 5, P.W. 2, wife of the deceased, and P.W. 3 were talking together by sitting on the pial of the house of one Raju Servai, the father of the deceased. At that time, they saw the deceased rushing from the eastern side and the appellant was chasing him with a knife in his hand. The 2nd accused was also running towards the deceased and came behind the appellant. Since there was drizzling, the deceased lost his balance and fell down in the drenched mud portion opposite to his father's house. The appellant began to stab the deceased with the knife four to five times and on seeing this, P.Ws. 1 to 3 cried out. P.W. 4. Muniammal, residing opposite to the house of Raju Servai, also witnessed the occurrence. After inflicting stab injuries, the appellant ran away along with the 2nd accused.

5. On hearing the noise, P.W. 5 came out of his house, which is situated very near to the place of occurrence. He was informed by P.W. 1 that the appellant had stabbed the deceased and ran away. P.W. 6 also came there. Thereupon, they arranged for a cycle rickshaw and took the victim Dhanapal to Raja Mirasdar Hospital, Thanjavur, wherein P.W. 9 Dr. Durairaj examined the victim at about 4.45 p.m., on 5-6-1985 and found on him five injuries as described in the Accident Register Extract Ex. P-6. Since the injured was in a serious condition, P.W. 9 advised them to take him immediately to the Thanjavur Medical College Hospital. P.W. 9 also sent Ex. P-7 intimation to police. The victim Dhanapal was taken to Thanjavur Medical College Hospital where P.W. 10, Dr. Anantharamkrishnan examined him and issued Ex.P-8. In spite of treatment, the injured died at about 4-15 a.m., on 6-6-1985 in the hospital.

6. At about 6.45 a.m., on 6-6-1985, on receipt of telephonic message from the Out-post Police Station of the Thanjavur Medical Collage Hospital, P.W. 11, Sub Inspector of Police, Thanjavur Taluk, went to the Medical College Hospital at 8.15 a.m., and obtained a complaint Ex.P-1 from P.W. 1. At 9.15 a.m. P.W. 11 returned to the police station, registered the complaint as Crime No. 388 of 1985 under Section 302 and 323, I.P.C., and sent express reports to the higher authorities.

7. P.W. 15, Inspector of Police, District Crime Branch, Thanjavur, was in charge of Thanjavur Taluk Police Station on 6-6-1985. On receipt of intimation at 12.30 p.m., on 6-6-1985, he went to Thanjavur Taluk Police Station and got the First Information Report. From there, he along with P.W. 11 went to the hospital and examined P.Ws. 1 to 3, 5 and 6 and one Raju Servai. He held inquest over the dead body between 1.30 p.m. and 3.00 p.m. Ex.P-16 is the inquest report. After inquest, he sent the body for post-mortem examination with Ex.P-10 requisition to the doctor through P.W. 12, P.C. 1127.

8. P.W. 13, Dr. K. Palani attached to the Thanjavur Medical College Hospital, on receipt of Ex.P-10 requisition, conducted autopsy on the body of deceased Dhanapal from 3-20 p.m., on 6-6-1985 and found external and internal injuries as described in the post-mortem certificate Ex.P-11. He opined that the death was due to shock and haemorrhage. According to him, external injuries 1 to 6 could

have been caused by a weapon like M.O. 1 and that external injury No. 2 is sufficient in the ordinary course of nature to cause death.

9. Continuing the investigation, P.W. 15 went to the place of occurrence along with the Sub Inspector of Police, P.W. 11, and prepared Ex.P-2 observation mahazar in the presence of P.W. 7. Ex.P-17 is the rough sketch prepared by him. He recovered M.O. 2 blood stained earth and M.O. 3 sample earth under Ex.P-3 mahazar. He examined P.W. 4 and others. On 8-6-1985 at about 11.30 a.m., P.W. 15 arrested the appellant in the presence of P.W. 10. The appellant gave a voluntary confessional statement, the admissible portion of which is Ex.P-4. The knife (M.O. 1) used by the appellant was recovered through his wife under Ex.P-5 mahazar. From that place, M.O. 4 sample earth was also recovered.

10. P.W. 15, the Inspector of Police, sent Ex.P-12 requisition to the Judicial Second Class Magistrate Court, Thanjavur, to send the M.Os. for chemical examination. P.W. 14 attached to the Judicial Second Class Magistrate Court, Thanjavur on receipt of Ex.P-12 requisition, sent the M.Os. for chemical examination. Ex.P-13 is the report of the Chemical Examiner and Ex.P-14 is the report of the Serologist. On 26-6-1985, P.W. 16, the successor Inspector of Police, took up further investigation and filed the chargesheet on 10-9-1985 against both the accused for offences under Sections 352 and 302, I.P.C.

11. On committal by the learned Judicial Second Class Magistrate, Thanjavur, the learned Sessions Judge framed two charges against the appellant for offences under Sections 352 and 302, I.P.C., and on his pleading not guilty, examined P.Ws. 1 to 16 and marked Exs. P-1 to P-17 besides marking M.Os. 1 to 5.

12. The appellant, when questioned under Section 313, Cr.P.C., in regard to the incriminating piece of evidence appearing against him, denied the charges, However, he filed a written statement wherein he denied the playing of cards by the appellant and others on the date of occurrence. He would say that there was previous enmity between the deceased and his father and since he refused to sign the sale deed relating to the sale of family property, his father Raju stabbed the deceased. He further says that while he was returning home, he saw people running here and there and that the deceased and Raju were fighting with each

other by rolling on the ground and that he intervened and separated them. He also snatched the knife from the father of the deceased and threw it away. He would then say that he was not arrested by the police as spoken to by them and that he did not give any confessional statement. He denies the recovery of the weapon of offence from his house by the police as spoken to by them and that he did not give any confessional statement. He denies the recovery of the weapon of offence from his house by the police. He did not examine any witness or mark any document on his side.

13. We have been taken through the entire evidence on record, both oral and documentary, and also the judgment of the Court below. Mr. M. Karpagavenayagam, learned counsel for the appellant, contended that there is a delay of 16 hours in registering the complaint and that the explanation offered by the prosecution for such delay is not at all acceptable. He would further contend that on the earliest document sent by the doctor P.W. 9 at 4-45 p.m., on 5-6-1985 to the police viz., Ex.P-7 no action was taken by the police authorities. The police pursuant to Ex.P-7 did not take any step to obtain a complaint from the victim or from P.W. 5. According to him, the failure to take immediate action on the complaint sent by the doctor P.W. 9 raises a serious doubt that there would have been some other complaint obtained by the Thanjavur West Police Station either from the victim or from his relatives even before his death. He, therefore, contended that there is suppression of material facts from the purview of Court.

14. Mr. M. Karpagavinayagam then argued that the death intimation was not produced before Court. Likewise, the telephonic message received from the hospital, ought to have been entered in the station General Diary. The said diary has not been produced before Court. All these show that there was an attempt to suppress the earlier complaint. He also pointed out certain discrepancies in the evidence of the prosecution witnesses. According to Mr. M. Karpagavinayagam, the trial Court has not considered the several infirmities in the prosecution case. He would contend that in the absence of any direct proof that the appellant alone caused the injuries on the deceased, the trial Court ought to have acquitted the appellant. He further contends that the motive alleged by the prosecution for the murder is very flimsy and in the absence of any positive proof, the conviction and

sentence imposed by the Court below are wholly unwarranted.

15. Mr. R. Raghupathi, learned Addl. Public Prosecutor, contended that the delay in giving the F.I.R. is not unreasonable since, as deposed by the prosecution witnesses, who are kith and kin of the deceased, all of them are interested only in saving the deceased. He would further contend that the injured Dhanapal died at 4.15 a.m., on 6-6-1985 and the F.I.R. was registered at 8.15 a.m., on the same day. Hence, there is no delay. According to him there is no delay at all in sending the records to Courts and all of them were sent on the very next day including the F.I.R. He would submit that minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here and there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. He would further urge that the trial Court had the benefit and opportunity to form the opinion about the general tenor of the evidence given by the witnesses whereas this Court has not this benefit and as such, this Court will have to give due weight to the appreciation of evidence by the trial Court unless there are reasons weighty and formidable, and it would not be proper for this Court to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. He said that the witnesses have deposed before the trial Court nearly after two years and therefore they may differ in some details unrelated to the main incident because power of observation, retention and re-production differ with individuals. He would conclude his argument by submitting that the evidence let in by the prosecution to prove the motive and the occurrence is unassailable and that when the evidence is so strong, this Court would not interfere with the conviction and sentence imposed by the Court below.

16. On going through the entire evidence and on a careful consideration of the rival submission made by the learned counsel on either side, we are of the view that the prosecution was not diligent in registering the F.I.R., within a reasonable time, which raises some suspicion in our mind, as rightly pointed out by the learned counsel for the appellant. The occurrence took place at 4.00 p.m., on 5-6-1985. It is not in dispute that the distance between the place of occurrence and the

Thanjavur Taluk Police Station is 4 Kms. According to the doctor P.W. 9, the victim was admitted at 4.45 p.m., on 5-6-1985 at Raja Mirasadar Hospital and thereafter he was referred to the Thanjavur Medical College Hospital. The injured died at 4.15 a.m., on 6-6-1985. P.W. 5 has admitted that there are two police stations viz., Thanjavur Taluk Police Station and Out-Post Police Station at Thanjavur Medical College Hospital. However, no attempt was made by any of them to give a complaint in any of the police stations. P.W. 1 gave a complaint at 8.15 a.m., on 6-6-1985 to P.W. 11, Sub-Inspector of Police, at the hospital. This complaint was given four hours after the death of Dhanapal and 16 hours after the occurrence. Admittedly, the F.I.R. was registered at 9.15 a.m., on 6-6-1985. Though an attempt was made by the prosecution to explain the delay, such explanation in our view is not convincing.

17. P.W. 1 says in the F.I.R., that the delay was due to the serious condition of the victim, who had to be attended to immediately. However, P.W. 1 gave a contra evidence to the effect that since nobody was available to attend the victim, the police was not informed. Later she says that her husband P.W. 5, and P.W. 6 were available at the Hospital. There was no explanation as to why there was no attempt to give a complaint between 4.45 p.m. on 5-6-1985 and 4.15 a.m., on 6-6-1985 even though there was a Police Station at the hospital itself. In fact, P.W. 3, sister of P.W. 5, requested P.W. 5 to inform the police immediately and P.W. 5 assured her that he would report to the police. When such being the case, we fail to understand as to the reluctance on the part of P.W. 5 to go to the police station when especially he himself admits that he knows about the location of the two police stations. The explanation offered by P.W. 5 that he was by the side of the victim and that no other person was available and therefore, he did not go to the police station is unconvincing and far from satisfactory. Of course, he later says that by the side of the victim there were three persons including P.W. 1, P.W. 6 and himself. P.W. 6 also admit that though he went to Raja Mirasdar Hospital on a cycle, he did not choose to go to the Thanjavur Taluk Police Station.

18. We have pointed out the several infirmities in the evidence of the prosecution witnesses. The Court below has not considered the inordinate delay in laying the F.I.R. The delay in registering the F.I.R. gives rise to suspicion in our mind. Even

the explanation offered for the delay is not acceptable. Therefore, in our view the possibility of falsely implicating the appellant cannot also be ruled out. This Court on many occasions expressed its view at the manner in which the investigation should be conducted. It is true that Courts have to see that no real culprit goes away beyond its reach and escapes punishment. But, at the same time, we have to bear in mind the cardinal principles of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt by letting in acceptable, convincing and implicitly reliable evidence, or otherwise, grave injustice would be the result if the Court chooses to punish a person only on moral satisfaction.

19. Mr. M Karpagavinayagam pointed out several infirmities and flaws in the investigation, which, in our view, cut at the root of the case bringing the whole edifice of the prosecution into debris. It is rather painful that in this case, despite the occurrence having taken place in broad day light, the authorities in charge of investigation have failed to follow the guidelines laid down by this Court in catena of decisions about the duties cast on them regarding the registering of the complaint, receipt and despatch of F.I.R., etc. We, therefore, hold, that the appellant is liable to be acquitted on the ground of inordinate delay in registering the F.I.R.

20. We now come to the contention of the learned counsel for the appellant that no investigation was done on Ex.P-7, which is fatal to the whole case. Ex.P-7 is the earliest document sent by the doctor P.W. 9 at 4.45 p.m., on 5-6-1985 to the police. In Ex.P-6, the accident register extract it is mentioned that the injured Dhanapal was in a state of semi-conscious stage and was not able to answer the questions. In Ex.P-7, accident and injury intimation to police, the particulars regarding the name of the injured, his address and the nature of injury have been mentioned. In Column 7 it is mentioned that the patient was referred to the Thanjavur Medical College Hospital. In Column 8 relating to whether dying declaration necessary, the same is left blank. It is not known as to why the police, who received Ex.P-7, did not take steps to obtain a complaint either from the victim or from P.W. 5. P.W. 15, the Investigating Officer says that he investigated the case on 7-6-1985 and recorded statements from Muthammal, Padmini, Sumathi, Vellaichami, Muniyandi and others. He further says that he went to Raja

Mirasdar Hospital on 5-6-1985 to enquire as to why intimation was not sent to the police from the hospital in regard to the admission of Dhanapal in the hospital and in fact, he enquired the doctor and the telephone operator and recorded their statements. He further deposes that the Telephone Operator Chandramohan is not alive and that he obtained a copy of the accident register extract and a copy of the intimation sent by the hospital to the police by requisition. In the chief-examination he deposes that the police has not received any intimation from Raja Mirasdar Hospital in the beginning but only on receipt of intimation from the Out-post Police Station of Thanjavur Medical College Hospital on the next day, he took up investigation. According to him he has not received any intimation directly from the Out-post police station but only on oral intimation by the Deputy Supdt. of Police, he obtained copy of the F.I.R., and commenced investigation. In cross-examination P.W. 15 has deposed as follows : 'I examined Chandramohan, Telephone Operator, and recorded his statement. The Telephone Operator informed me at the time of enquiry that he has given information to the Thanjavur West Police Station. Thereupon, I went to Thanjavur West Police Station and enquired the Writer, Head constable and para Constable and recorded their statements, I commenced the investigation only after the order of the Deputy Supdt. of Police on 6-6-1985 at 12-30 p.m. I first went to Thanjavur Medical College Hospital. I did not visit the place of occurrence first, and examine the witnesses. I first went to the mortuary and after inquest, went to the place of occurrence and examined the witnesses. I went to the house of Thiagarajan in search of the playing cards. I came to know that the playing cards were torn into pieces. However, the playing cards were not traceable at the time of search.'

21. It is seen from the evidence of P.W. 15 that he recorded the statements of the Telephone Operator Chandramohan and the doctor P.W. 9. But the same has not been marked or made available to the Court. One thing is clear that the police has not conducted any investigation on Ex.P-7. In our opinion, the failure to probe into the action taken by the Thanjavur West Police Station raises a serious doubt that there would have been some other complaint obtained by Thanjavur West Police Station either from the injured or from his relatives even before his death.

If that be so, in our view, it amounts to suppression of material facts from the purview of Court.

22. According to the Sub-Inspector of Police P.W. 11, his constable received a telephonic message at 6.45 a.m., on 6-6-1985 from the Out-post Police Station of Thanjavur Medical College Hospital and then he went to the said hospital and obtained a statement from P.W. 1 at 8.15 a.m. The constable who received the telephonic message was not examined by the prosecution. P.W. 11 also did not say the nature of telephonic message which he received. P.W. 10, Dr. Anantharamakrishnan only says that the deceased died at 4.15 a.m., on 6-6-1985. He did not speak about the death intimation. Therefore, we are unable to understand as to how the Out-post Police Station received the news, from whom and at what time and the nature of message given. The General Diary of the Thanjavur Taluk Police Station relating to the telephonic message was also not produced before Court. All these would only strengthen the arguments of Mr. M. Karpagavinyagam, learned counsel for the appellant, that there was an attempt to suppress the earlier complaint. The non-examination of material witnesses viz., Head Constable attached to Thanjavur West Police Station and the Head Constable attached to the Out-post Police Station of Thanjavur Medical College Hospital, creates a doubt in our mind that the prosecution did not present the entire facts of the case before Court.

23. The evidence of P.Ws. 1 to 3 shows that both the accused were chasing the deceased. The F.I.R. is very silent on the aspect of chasing by the 2nd accused. P.W. 4 also says that she did not see the 2nd accused. It only goes to show that the prosecution has tried to implicate the 2nd accused also in this case, of course, belatedly. P.W. 4 says that she was examined at the inquest but P.W. 1 did not mention the presence of P.W. 4 in the F.I.R. Even in her chief-examination she did not refer about P.W. 4. P.W. 15, the Inspector of Police, admits that P.W. 4 was examined only at the place of occurrence after the inquest. Thus, it is clear that she was not examined at the inquest. So, the plea put forward by the appellant that P.W. 4's evidence has been belatedly introduced has some force.

24. Further, P.W. 1 did not mention about the presence of P.W. 3 in the F.I.R., but she mentioned about P.W. 3 in her chief-examination. So, the contention of the learned counsel for the appellant that P. W. 1 introduced P.W. 3 subsequently merits acceptance. P.W. 1 also gives a new case in the F.I.R., and in her cross-examination, that the deceased gave an oral dying declaration to P.W. 3. We searched in vain to find whether the case of oral dying declaration is spoken to by any other witness. In fact, the doctor P.W. 9 says that the injured Dhanapal was not able to speak. P.W. 1 says in cross-examination that dying declaration was recorded by the doctor P.W. 9, but P.W. 9 says that he did not record any such statement from the injured. P.W. 1 also says that the doctor P.W. 10 recorded statement from the witnesses but P.W. 10 says that he did not record any statement.

25. The case put forwarded by the learned counsel for the appellant in regard to the recovery of the weapon of offence is to be accepted for the following reason. M.O. 1 was recovered, according to the prosecution, pursuant to the confession given by the appellant, through his wife. However, as per the Serologist Report Ex. P-15, the knife did not contain any blood. So, as rightly contended by the learned counsel for the appellant, the recovery of the weapon is also not admissible because Ex. P-4 does not satisfy the provisions of Section 27 of the Evidence Act.

In Ex. P-6, accident register extract, the doctor P.W. 9 has recorded that the injured Dhanapal was stabbed by a known Person whereas Ex. P-7 Police intimation shows that he was stabbed by known persons.

26. In view of the several infirmities in the prosecution case, we are of the opinion, that the finding of the Court below is wholly erroneous. The involvement of one Rasu in the commission of the alleged offence could not, therefore, be completely ruled out. Though the prosecution has cited him as a witness, he was not examined at all. There is absolutely no proof that the appellant alone caused the injuries on the victim. Above all, the motive or the reason for the alleged murder appears to be very flimsy. As already stated, M.O. 1, alleged to have been used for committing the offence, did not contain blood-stain and as such, the possibility of the usage of M.O. 1 is doubtful. Therefore, the reliance placed by the Court

below on M.O. 1 for convicting the appellant is not proper.

27. Yet another infirmity in the prosecution case is, it has been admitted by the prosecution witnesses that more than one report was made at the first instance. In such circumstances, the trial Court failed to note that Ex.P1 is not at all admissible in evidence and no copy of it was given to P.W. 1 as per Section 154(2), Cr.P.C. and it robs Ex. P-1 of its veracity. In our opinion, the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

28. For all the foregoing reasons, we hold that the prosecution has not proved its case against the appellant beyond all reasonable doubts, and as such, the appellant is entitled to that benefit. Accordingly, we hold him not guilty to the charge under Section 302, I.P.C.

29. In the result, the appeal is allowed, the conviction and sentence imposed by the trial Court are set aside and the appellant/1st accused is acquitted and that he shall be set at liberty forthwith if he is not required in connection with any other case.

30. Appeal allowed.