SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kitherian Vs. State

Kitherian Vs. State

SooperKanoon Citation : sooperkanoon.com/820279

Court : Chennai

Decided On : Feb-09-1999

Reported in : 1999CriLJ2405

Judge : M. Karpagavinayagam and ;V. Bakthavatsalu, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 568 of 1988

Appellant : Kitherian

Respondent : State

Advocate for Def. : N.R. Elango, Govt. Adv.

Advocate for Pet/Ap. : I. Subramanian, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. Kitherian, the appellant herein, challenging the conviction under Section 302. IPC and the sentence of life imprisonment imposed upon him in SC No. 214/87 on the file of the I Addl. Sessions Judge, Thirunelveli, has filed this appeal.

2. Originally, the appellant (Al) and Moses Maskaranas (A2) were charged and tried for the murder of one Jesu Antony. The trial Court acquitted A2 and convicted the appellant alone. The skeleton which is required for the disposal of this appeal could be summarised as follows:--

(a) Both the prosecution party and the accused party belong to Kuthenkuzhi village. The deceased Jesu Antony was a fisherman owning 'Kattumaram' and used to go into sea for catching fish. P.W. 1 Antony Kitherian and P.W. 2 Arulappan also used to accompany the deceased. P.W. 3 Babu is also another Kattumaram owner. Both the accused, Al, the appellant herein and A2 are fish merchants.

(b) The fateful occurrence took place on 30-8-86 at about 5-00 p.m. On that day early morning, the deceased Jesu Antony, P.W. 1 Antony Kitherian and P.W. 2 Arulappan went into the sea and came back in the evening on the same day to sea-shore after catching 16 'Thirukai fish'. On reaching the sea-shore the deceased, P.W. 1 and P.W. 2 spread the fish on the sea sand.

(c) At that time, both the accused came there and offered to purchase this fish at the rate of Rs. 15/- per fish. However, the deceased did not agree for this price. Therefore, all the three tried to take back the fish which was spreajd near the accused. At that point of time, the appellant told them that the fish once brought to this area were only for them and, therefore, they should not take back.

(d) In spite of his warning, the deceased Jesu Antony said that he would not give the fish for the meagre price of Rs. 15/-. So saying, he bent down and took the fish back. On seeing this, Moses Maskaranas (A2) came and caught-hold of the deceased from behind. At that point of time, the appellant took M.O.1 'Thirukai Aruval' and inflicted two cuts on the deceased, one cut on the left side of the face and another cut on his left ear. The deceased cried aloud. Both the accused ran away from the place towards north.

(e) P.Ws. 1 and 2 held the deceased Jesu Antony without allowing to fall down on the ground. The appellant (A 1) while running, threw away the 'Thirukai Aruval' M.O. 1 near the hut. While P.W. 2 Arulappan was helping the injured Jesu Antony,

P.W. 1 ran to Kuthekuzhi Post Office and requested the Post Master C.W. 1 to phone up to Thysaiyanvilai to send a Taxi, in order to take the victim to the hospital. Accordingly, C.W. 1 informed the Taxi stand.

(f) Thereafter, P.Ws. 1 and 2 after bandaging his injury with towel, carried the injured to his parent's house situated nearby.

(g) In the meantime, the appellant (Al) while running away from the place of occurrence towards north after inflicting injuries on the deceased, fell down on a stone and sustained injuries. However, he managed to get up and ran away.

(h) On receipt of information from the Post Master, Mohammed Nainar (P.W. 9), who was working in a petrol bunk at Thisaiyanvilai, asked P.W. 10 taxi driver to go to Kuthenkuzhi village. P.W. 10 reached Kuthenkuzhi village at about 6-30 p.m. P.Ws. 1 and 2 and one Antony Michael put the victim inside the taxi and took him to the Government Hospital, Nagercoil. They reached the hospital at about 8-30 p.m.

(i) P.W. 14, Dr. Indira Kumaravel, who was working in the casualty ward at Headquarters Hospital, examined the victim and declared that he had already died. Immediately, thereafter she sent Ex.P-12 death intimation to Nagercoil Court Police Station. P.W. 11 Head Constable, on receipt of Ex. P-12, at about 9-00 p.m. went to the hospital and obtained a statement from P.W. 1. This is Ex. P-l. A case was registered in Crime No. 1052/86 for the offence under Section 302. IPC. The printed FIR is Ex. P-l3 which was immediately sent to the Judicial Second Class Magistrate, Nagercoil, since the occurrence took place within the jurisdiction of Radhapuram Police Station. He also sent a copy of the FIR to Radhapuram Police Station.

(j) In the meantime, on 30-8-86 at about 9-30 p.m., the accused went to Thirunelveli Medical College Hospital and got himself admitted. P.W. 5 Dr. Murugan found 3 injuries on him and issued wound certificate Ex. P.5. He stated to the Doctor that he was attacked with Aruval and stick by known person at about 5-30 p.m. P.W. 5 sent intimation to the Outpost Police Station. P.W. 13 Arumugam, Head Constable, on receipt of Ex. P-15 intimation report from the

hospital, went to the hospital and found that the inj ured person was, not there and he learnt that the injured person had absconded from the hospital at about 0.20 hours midnight. This intimation Ex. P-l6 was, in turn, sent to the Radhapuram Police Station.

(k) P.W. 12 Subbaiah, Head Constable, attached to the Radhapuram Police Station, on receipt of copy of Ex. P-13 from Nagercoil Court Police Station, registered a case in Crime No. 185/86 under Section 302. IPC. The printed FIR is Ex. P-14. This Ex. P-14 was sent to the Judicial Second Class Magistrate, Nanguneri immediately.;

(1) P.W. 15 Jayamani, the Inspector of Police,; who was on additional charge of Thisaiyanvilai Police Station, on receipt of copy of Ex. P-15, took up the investigation and went to the hospital at 9-00 a.m. He conducted inquest and examined P.Ws. 1 and 2 and prepared inquest report Ex. P-17.

(m) On receipt of requisition from the Inspector of Police, P.W. 4 Doctor Manoharan attached to the Nagercoil Govt. Headquarters hospital conducted post-mortem at about 2-00 p.m. on 31 -8-86 and found two injuries, one on the left parietal region of scalp and another on the left temporal region of scalp. The injuries are as follows:--

1. One incised wound extending from left parietal region of scalp running anterior and downwards over the left side of face cutting through the medial 1/3 of left orbit, left side of nose, including ala nasi and ending at the upper border of left upper lip 1 cm lateral to mid-line length 10' x maximum width over left forehead just above eye-brow 1' (Total depth under int. injuries) Depth at parietal 1/4' at upper lip 1/8'.)

2. A chopped wound over left temporal region of scalp 5' x 1' x 3V4' directed from above downwards. The left ear is hanging intact by skin flap raised by the injury. Injury extends 1 1/2 in front and 3 1/2 behind and W above left ear. P.W. 4 Doctor opined that the deceased would appear to have died due to shock and haemorrhage due to the injuries sustained. The postmortem certificate is Ex. P-4.

(n) P.W. 12 the Head Constable after postmortem seized M.0.2 blood-stained Lungi, M.O. 3 Steel chain and M.O. 4 blood-stained towel' from the dead body of the deceased and handed over them to the police.

(o) P.W. 15 thereafter, on 31-8-86 at about 3-00 p.m. went to the scene and prepared observation mahazar Ex. P-10 and seized M.Os. 5, 6 and 7 in the presence of P.W. 8 Village Administrative Officer. He also prepared Ex. P-18 rough sketch. At about 5-00 p.m., P.W. 15 recovered M.O. 1 Aruval in the bush near 'Kurusadi' in the presence of P.W. 4 under Mahazar Ex. P-2. After examination of all the witnesses, he sent M.Os. for chemical analysis through Court. P.W. 15 came to know that the appellant who escaped from the hospital at Tirunelveli, surrendered before the Judicial Magistrate, Virudhunagar on 22-9-86. After investigation was over, the charge-sheet was filed on 5-1-87.

(p) During the course of trial, on the side of the prosecution, P.Ws. 1 to 15 were examined, Exs. P-l to P-18 were filed and M.Os. 1 to 8 were marked. On the side of the defence, Exs. D-l and D2 were filed.

(q) When the accused was questioned under Section 313, Cr. P.C., he would simply state that a false case was foisted against him and there was a riot in the village, and in that he sustained injuries.

(r) Through C.W. 1 Post Master, who was examined as a Court witness, Ex.C-1 was marked.

(s) After consideration of the entire materials placed before the Court, the trial Court, though acquitted A2, concluded that the deceased died only at the hands of the appellant and thereby convicted him for the offence referred to above.

3. Mr. I. Subramanian, the learned counsel appearing for the appellant, would take pains and effectively submit, by taking us through the entire evidence, that the prosecution case ought not to have been accepted, since it suffers from innumerable improbabilities, that the conduct of the witnesses in not reporting to the Village; Administrative Officer or to the police, though they were nearby, would cause dent on the credibility of the ocular evidence and that the possibility of false

case being foisted in the light of the admitted position that there were two factions to which both the prosecution party and the accused party belong cannot be ruled out.

4. Per contra, Mr. Elango, the learned Government Advocate, would repel the submissions made by the learned counsel for the petitioner, by pointing out that mere irregularity in the conduct of the investigation in any manner would not affect the case of the prosecution, as long as the evidence of P.Ws. 1 to 3 is reliable and unshakable. He would further submit that the trial Court has given valid reasonings to come to the conclusion that the prosecution has established its case beyond reasonable doubt.

5. We have given our anxious thought over the rival contentions urged on either side.

6. This is a case, where the occurrence had taken place at 5-00 p.m. at the sea-shore. P.Ws. 1 and 2 are the eye-witnesses, who spoke about the occurrence in detail. The motive for the occurrence is that when the appellant asked the deceased to sell the fish at the rate of Rs. 15/- per fish, the deceased refused to agree for the said rate and attempted to take back the fish spread in the sea-sand in front of the appellant. When both P.Ws. 1 and 2 and the deceased were warned by the accused not to take back the fish, P.Ws. 1 and 2 kept quiet. The deceased Jesu Antony, who was the owner of the 'Karrumaram' as well as the fish, bent down and attempted to take back the fish. This had enraged the appellant to take the 'Thirukai Aruval' M.O. 1 and gave tow cuts, one on the left parietal region of scalp and another on the left temporal region of scalp.

7. According to the Doctor, both injuries are very serious, P.W. 4 would say that the deceased would have died an hour later. It is the version of P.W. 1 that after the occurrence was over, he immediately, rushed to C.W. 1 Post Master and requested for arranging for a Taxi for the victim to be taken to the hospital, in order to save his life and that on receipt of the information given by the Post Master, P.W.' 10 Taxi driver took the victim to the Nagercoil hospital, where the deceased was declared dead.

8. Regarding these details, in our view, the deposition given by P.Ws. 1 and 2 is cogent and consistent, which is fully corroborated by the complaint, which was given by P.W. 1 to P.W. 11.

9. Of course, as rightly pointed out by the learned counsel for the appellant, P.W. 3 did not report to the Village Administrative Officer or to the nearby police station immediately, even though he was an eye-witness. But, the conduct of P.W. 3 in not reporting to the authorities concerned cannot be given any importance, inasmuch as P.Ws. 1 and 2 took the victim alive to the hospital for taking treatment. Therefore, P.W. 3 might not have known as to what happened to the deceased. P.W. 3 might have under the impression that P.Ws. 1 and 2 who had accompanied the deceased, in order to take the victim to the hospital would give complaint to the Police Station. Therefore, failure to report to the Village Admin-i strative Officer and to the Police Station by P.W. 3 cannot, in any way, affect the credibility of the evidence given by P.Ws. 1 and 2.

10. Moreover, even if we eschew the evidence of P.W. 3 more so when he was not examined during inquest, we have got the testimony of P.Ws. T and 2, who were examined during the course of inquest, out of whom P.W. 1 is the first informant. The first information was given by P.W. 1 to P.W. 11, who was attached to the Court Police Station, Nagercoil at about 10-00 p.m. which was immediately registered at 10-15 p.m. and the printed FIR was sent to the Magistrate at about 10-30 p.m. Therefore, the accusation as contained in the FIR Ex. P-1 and Ex. P-13 would clearly show that P.Ws. 1 and 2 were at the spot when the occurrence had taken place and they are the natural eye-witnesses, in view of the fact that the details in the deposition are clearly in consonance with the details given in the FIR. Therefore, there is no difficulty for this Court to come to the conclusion that the ocular evidence given by P.Ws. 1 and 2 is quite reliable and acceptable, especially when the overt acts attributed to the appellant on the deceased as spoken to by P.Ws. 1 and 2 is fully corroborated by the medical evidence adduced by P.W. 4.

11. One more strong piece of evidence is available in this case. According to P.Ws. 1 and 2, the deceased and P.Ws. 1 and 2 went into the sea by taking their 'Kattumaram' in the early morning, i.e., at 5-00 a.m. While they go to sea they also

used to take some rice in a pot. According to P.Ws. 1 and 2, all the three took rice between 12-00 p.m. and 1-00 p.m. This was also stated by P.Ws. 1 and 2 both in chief and cross. This aspect is fully corroborated by the medical, evidence adduced by P.W. 4, who would say that the stomach of the deceased contained partially digested rice. Therefore, in view of this circumstance, also, we are of the view that the details of the occurrence and the part played by the appellant has been fully established by the evidence of P.Ws. 1 and 2 and P.W, 4.

12. As regards various commission and omission committed by the Investigating Officer, much was said about. In fact, P.W. 15, the Investigating Officer goes to the extent of saying that he himself had written the statement of one Dr. Kasiammal even without examining her thinking that she had given the death' intimation Ex. P-12 to the Police.

13. No doubt, it is true that the name of Dr. Kasiammal was cited as oral of the witnesses in the charge-sheet. But, the said Kasiammal was not examined because the Doctor who sent the intimation is one Dr. Indira Kumaravel who has been examined as P.W. 14 who fairly states that though Dr. Kasiammal was working at the relevant time in the hospital, she did not examine the deceased, whereas P.W. 14 examined the deceased and sent the death intimation. Therefore, if the prosecution had examined Dr. Kasiammal, though she had not given the death intimation, then we would have viewed that the prosecution failed to examine the real witness, which may be a fault on the part of the Investigating Officer. But, the Investigating Officer himself would admit that he thought that the death intimation was sent by Dr. Kasiammal and that, therefore, he himself had written the statement of Dr. Kasiammal, as if she had given the intimation. This cannot, in our view, affect the core of the prosecution case.

14. Yet another very important piece of evidence we would like to notice is that the materials placed by the Investigating Officer with reference to the appellant getting himself admitted in the Thirunelveli Hospital at about 9-15 p.m. on the same day and gave a statement to P.W. 5 Doctor he was attacked by some known person with 'Aruval' and stick. Even though such a statement was given by the accused to P.W. 5 who in turn suspected fracture in his leg and admitted him in the accident

ward, the appellant for the reason best known to him immediately left the hospital at about 0.20 hours midnight and escaped. This was on 30/31-8-86. But, he chose to surrender along with A2 before the Judicial Magistrate, Virudhunagar on 22-9-86. This also would, in our view, give an indication that the accused, on receipt of message that the deceased who was attacked by him died, escaped from the hospital which implies that the accused must have participated in the occurrence as deposed by PWs. 1 and 2. Therefore, the materials placed before the Court through these witnesses, in our considered opinion, are sufficient to base the conviction under Section 302. IPC.

15. Mr. I. Subramanian, the learned counsel appearing for the appellant would strangely contend, in a bid to explain the injury on the accused that P.W. 7 was introduced as an eye-witness as if he saw the accused falling down on the 'Padavadali'. He would also point out the cross-examination of P.W. 5 wherein it has been admitted that this would not have been caused by falling down on the 'Padavadali'. Whatever it may be. We are not very much concerned with the evidence of P.W. 7 and the injuries sustained by Al. It is not the case of the prosecution that during the course of occurrence the accused sustained injuries. As such, we are not inclined to give any importance to the evidence of P.W. 7. But, other materials, as discussed above in our view, would clearly reveal that the occurrence had taken place in the manner alleged by the prosecution as projected by P.Ws. 1 and 2.

16. At the end, Mr. I. Subramanian, would point out by citing the decision of the Apex Court in Mahesh v. State of M.P. (1996) 3 Cri 258 : : 1996 CriLJ4142 that even assuming that the entire occurrence is true, the appellant could not be convicted for the offence under Section 302. IPC and at the most, the act committed by the appellant would fall under Section 300, Exception 4 thereby he could be convicted either under Section 304 Part-I or Part-II We have also given our careful consideration to the submission made by the counsel for the appellant, but we are not able to accept the submission made by the learned counsel for the appellant because in the said case, the accused dealt a single blow out of a sudden fight and sudden quarrel. That is not the case here. There was no sudden fight in the instant case. The case of the prosecution here is that the deceased

who was the owner of the 'Thirukai fish' wanted to get back his fish by bowing down and attempted to take the fish because he was not agreeable for the price fixed by the accused. This cannot, in our view, give rise to the factor to indicate that there was a sudden fight and sudden quarrel with the result, the attack was made.

17. Moreover, the appellant took the lengthy 'Thirukai Aruval' and caused two deep cuts on the head as found in the post-mortem certificate. Therefore, we are of the view that the appellant had used the dangerous weapon M.O.1 Thirukai Aruval with the intention to cause death of the deceased by inflicting two injuries on the vital parts of the deceased. Therefore, he is liable to be convicted for the offence under Section 302. IPC.

18. Under these circumstances, the conviction and sentence imposed upon the appellant by the trial Court are confirmed and the appeal is dismissed. The trial Court is directed to take steps to commit the accused to judicial custody to undergo the remaining period of sentence. The bail bond, if any, executed by the appellant stands cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com