

Shivan and Etc. Vs. State

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Court : Chennai

Decided On : Feb-24-1999

Reported in : 1999CriLJ4153

Judge : T. Jayarama Chouta and ;A. Ramamurthi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 109, 302 and 324; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : C.A. No. 645 of 1989

Appellant : Shivan and Etc.

Respondent : State

Advocate for Def. : S. Anbalagan, Add. Public Prosecutor

Advocate for Pet/Ap. : C. Pandian, Adv.

Judgement :

T. Jayarama Chouta, J.

1. The two appellants who are brothers were tried by the Sessions Judge, Dharmapuri at Krishnagiri in Sessions Case No. 34 of 1998 and the Sessions Judge by a Judgment dated 30-6-1989 convicted the Appellant No. 1 under Section 324, I.P.C. and sentenced to under go three years rigorous imprisonment

whereas Appellant No. 2 has been convicted under Sections 302 and 324, I.P. C. on two counts and sentenced to undergo imprisonment of life and rigorous imprisonment for three years for each count with the further direction that the said sentence should run concurrently. The said conviction and sentence have been challenged in this criminal appeal. The charge against A1 was under Sections 302 read with 109 and 34, I.P. C. and under Section 324, I.P. C. Whereas the appellant No. 2 was charged for an offence under Sections 302 and 324, I.P. C. on two counts as mentioned above.

2. The prosecution case in brief is as follows :-

P. W. 1 and P. W. 3 are the son and daughter of the deceased Chinnathambi. P. W. 2 is the wife of the deceased. The appellants are the elder brother of the deceased, Munusamy's sons. Some eighteen years back the deceased, his elder brother Munusamy and brother-in-law of his elder brother jointly purchased an extent of 22 1/2 acres of land and the document was written in the name Munusamy father of the accused. By an oral partition the lands were divided among the owners and nine acres of land were given to the share of the father of the accused. Four or five years after the said purchase the deceased demanded a written partition from the elder brother and he demanded Rs. 1,000/- or Rs. 2,000/- for that, there was difference of opinion in their family. The said Munusamy also purchased some lands at Thappai which is at a distance of 5 kms. from the lands and resided there with his elder son Vali, P. W. 13. The accused were living with their father in Thenkalankuttai, having their landed property. The deceased lands were situate just adjacent to the lands of the accused. The cattle of the deceased used to graze the crops of the accused and similarly the cattle of the accused also used to graze the crops of the deceased. There used to be frequent quarrels between their family. One P. W. 3, the daughter of the deceased had given a complaint that the accused's cattle grazed the crops from their field and for that appellant No. 2 beat her and in the Panchayat the accused No. 2 beat her and in the Panchayat the accused No. 2 and P. W. 3 were asked to pay fine. This also aggravated their enmity.

3. On 15-4-1987 at about 8 a.m. the deceased Chinnathambi quarrelled with the accused for the cattle being grazed his Ragi crops for which the accused threatened that the family members of the deceased should not pass through their land. At about 4 p.m. the deceased and P. W. 2 went to Kathirampatti to purchase betelnut and betel leaves. At about 8 p.m. P. W. 2, the wife of the deceased and P. W. 3 the daughter of the deceased were standing outside their house and P. W. 1 was inside. At that time they heard the noise of the deceased from the foot-path which passes through the house of the accused and all the three of them ran towards that place. There was moon-light on that day. When they reached the place of occurrence they noticed A2 cutting Chinnathambi, the deceased with M. O. 3 Koduval. They saw Accused No. 2 with M. O. 3 Koduval and cutting on his left neck and Chinnathambi was lying there. A1 was standing nearby. On seeing this P. W. 1 raised alarm and at that time A1 cut P. W. 1 with M. O. 1 Koduval on the face near the left eye. As on receiving the cut, P. W. 1 started to run away from that place. Accused No. 2 threw M. O. 3 on P. W. 1 which fell on the back side of the neck. Again A2 with the inside portion of M. O. 3 assaulted P. W. 3 on her forehead and placed his leg on her neck and was stamping. On hearing the noise of P. W. 1 and P. W. 3, P. W. 4 who had gone with the deceased who had accompanied him and left the place returned to the scene of occurrence and saw the accused No. 2 stamping on the chest of P. W. 3. He pushed him away. P. W. 2 who had also sustained injuries narrated the incident to P. W. 4 and requested him to find out the whereabouts of P. W. 1 and accordingly P. W. 4 left the place in search of P. W. 1. Chinnathambi died on the spot and the accused ran away from that place carrying weapons with them.

4. It was the further case of the prosecution that P.W.1 who ran away from the scene met one Manickam and informed him about the occurrence. The said Manickam took P. W. 1 to one Perumal. P. W. 8 and some other persons who were present there took the injured P. W. 1 to P. W. 7 or Gounder of Kathirampatti who sent P. W. 1 to the Palacode Hospital through P. W. 5,, Manmadan, P. W. 4 came to the said hospital and saw the injured.

5. On 16-4-1987 the Assistant Civil Surgeon of Palacode Hospital on receiving the information that the injured was admitted in the hospital went to the Hospital at

3.30 a.m. and examined P. W. 1 and treated him for his injuries and issued a wound certificate Ex. P. 19. According to the Doctor, the injuries sustained by P. W. 1 were simple in nature. P. W. 1 was admitted in the hospital and an intimation Ex. P. 17 was sent to the police station at Palacode.

6. On 16-4-1987 at about 4 a.m. P. W. 16 the Sub-Inspector of Police, Palacode Police Station received the intimation Ex. P. 17 from the hospital and went to the hospital and recorded the statement Ex. P. 1 from P. W. 1 and got the LTI of P. W. 1 in the said statement. Since the offence was committed within the jurisdiction of Maranda Halli Police Station P. W. 16 forwarded Ex. P. 1 and the F. I. R. Ex. P. 17 to the said police station through a constable.

7. P. W. 17, the Sub-Inspector of Police, Maranda Halli Police Station received Ex. P. 1 and Ex. P. 17 sent by P. W. 16 at 7.15 a.m. and on the basis of Ex. P. 1 registered a case in crime No. 42/87 under Sections 302 and 324, I. P. C. and forwarded the Express Report Ex. P. 18 to the Judicial Magistrate and to his superiors. P. W. 21, the Inspector of Police, Kaveripattinam received wireless message from P. W. 17 at 7 a.m. on 16-4-1987 and reached Maranda Halli Police Station and took up the investigation. He went to the scene of occurrence and in the presence of witnesses conducted inquest between 10.30 a.m. and 2.00 p.m. as per Ex. P. 26. During the course of inquest he recorded the statements of P. Ws. 2 to 4. He also seized M. 0.4 skirt of P. W. 3 under Mahazar Ex. P. 5 in the presence of P. W. 9. He also prepared observation Mahazar Ex. P. 6 and a rough sketch Ex. P. 27. He made arrangements through P. W. 17 to take the photos of the deceased. He made arrangement to send the dead body for postmortem through P. W. 14 with a request Ex. P. 2. He sent P. W. 3 to the hospital for treatment since P. W. 3 had sustained some injuries on the head. P. W. 21 seized the blood stained baniyan M. 0.2 of P. W. 1 on the hospital under a Mahazar Ex. P. 8 in the presence of witness P. W. 10. On 16-4-1987 at about 7.45 p.m. the doctor P. W. 6 examined P. W. 3 and treated and issued wound certificate Ex. P. 4. P.W; 3 had sustained simple injuries. P. W. 6 received requisition Ex. P. 2 at 7.15 p.m. to conduct the postmortem and accordingly on 17-4-1987 at 9.30 a.m. he conducted postmortem and noticed the following injuries.

1. A deep lacerated wound on the left side of neck crossing the midline anteriorly and extending up to vertebral column posteriorly. Severing the great vessels on left side.
2. A lacerated wound over the left side of Mandible 7' x 3' bone deep. The ear lobule of left side severed along with it.
3. A lacerated injury over the left parietal region. 5' x 1' x bone deep vertically up to left ear.
4. An incised semi-circular wound over the right parietal and occipital region 4' x 1' x bone deep.
5. A penetrating injury below the right eye 1' x 1/2 bone deep.
6. A deep incised injury over the occipital region 6' x 2' x brain deep. Brain substance oozing out from the wound.

He furnished his opinion that the deceased appears to have died of shock haemorrhage and injury to vital organ brain 36 to 42 hours prior to autopsy. He issued certificate Ex. P. 3. According to the doctor the injuries 1, 3 and 6 were sufficient in the ordinary course of nature to cause the death.

8. On 17-4-1987 at about 8.30 a.m. P. W. 21 in the presence of P. W. 19 arrested the accused No. 1 who was sleeping inside the Venkatachalapathy temple at Vellichanthai and on the basis of the statement given by him which was recorded as Ex. P. 20 M. O. 1 Koduval was recovered from the old bridge situated south west of Sudapatti in the first hole under the bridge under Mahazar Ex. P. 21 in the presence of P. W. 19. He has also seized M. O. 19 the baniyan of the accused No. 1 from his person. On 19-4-1987 at about 7 a.m. P. W. 21 arrested the accused No. 2 from Kovilure Kundankattu Marramman Ternpie in the presence of P. W. 20 and on the basis of his statement of Ex. P. 24, M. O. 3 Koduval was recovered from the hole near a passage near east of Kardikundu and west of the Karadu under Mahazar Ex. P. 25,

9. P. W. 21 after receiving the reports of the Chemical Examiner and the Serologist as per Exs. P. 13 and 16 and after completing the investigationLald a charge sheet against both the accused on 19-6-1987.

10. On committal the Sessions Judge framed the charges against the accused as mentioned above. The accused pleaded not guilty. On behalf of the prosecution P. Ws. 1 to 21 were examined, Exs. P. 1 to P. 27 were got marked and M. Os. 1 to 19 were produced before the Court. No witness nor any document was produced on behalf of the defence. The defence of the accused was one of total denial. According to the accused No. 1 he was arrested from his house and according to the accused No. 2 he was arrested when he was in the house of one Advocate at Palacode. They also denied the statement made before the Investigation Officer which led to recovery of the weapons M. Os. 1 and 3.

11. The Sessions Judge after conclusion of the trial and after examining the accused under Section 313, Cr. P. C. by putting all the incriminating circumstances which were against them under the evidence convicted and sentenced as mentioned above.

12. We heard the learned Advocate Mr. C. Pandiyan on behalf of the appellants and the learned Additional Public Prosecutor on behalf of the respondent. They took us through the material evidence and the relevant documents in the case. The learned Advocate Mr. C. Pandiyan submitted before us that the Sessions Judge was not right in placing reliance on the evidence of P. Ws. 1 to 4 to convict the accused. According to him P. Ws. 1 to 4 were not telling the truth before the Court. He further submitted that in Ex. P. 1 the earliest version given by P. W. 1 he has not stated who was the person who assaulted the deceased. According to such statement when all these persons had gone to the scene of occurrence they saw the deceased Chinnathambi lying dead. Only before the court these witnesses have made the version that it was accused No. 2 who assaulted the deceased Chinnathambi. Therefore his further submission that the trial Court having disbelieved the motive regarding the land dispute should not have convicted the accused on the basis of the interested witnesses. He has also further submitted that the prosecution itself was not sure as to who has given Ex.

P. 1 whether it was P. W. 1 or P. W. 5 before the Sub-Inspector of Police. He further submitted that according to the version of P. W. 5 before coming to the hospital they had already gone to the Palacode police station and they narrated about the occurrence before the Sub-Inspector of Police and the said statement is not forthcoming. His further contention was there were number of discrepancies in the evidence of the so-called eye-witnesses and the Sessions Judge was not justified in simply placing reliance on the evidence of eyewitnesses without scrutinising the said infirmity in their evidence. His last submission was that the Sessions Judge was not justified in placing reliance on the recovery of weapons at the instance of the accused in view of the fact that there were confusion regarding the recovery of weapons from the accused. On all these grounds he argued before us that the Sessions Judge was not justified in convicting them.

13. We heard the learned Additional Public Prosecutor on all these points. He submitted before us that the Sessions Judge was justified in placing reliance on the evidence of P. Ws. 1 to 4 in coming to the conclusion that it was the accused No. 2 who caused the death of Chinnathambi and injuries by the accused on P.Ws. 1 and 3. He has also further submitted that P. Ws. 1 and 3 are the injured witnesses and their presence at the time of the incident cannot be doubted. He pointed out that it was P. W. 1 whose statement was recorded by P. W. 16 even though according to P. W. 5. he narrated the incident and this will not in any way affect the prosecution case. He lastly submitted that in addition to the evidence of P. Ws. 1 to 4 there is further evidence of motive and the recovery of the weapons at the instance of the accused and also the recovery of the blood stained clothes from their person when they have been arrested. The Sessions Judge according to the learned Additional Public Prosecutor was justified in convicting the appellants on the basis of the materials placed before him by the prosecution.

14. It was not disputed before the trial Court that Chinnathambi met with an homicidal death in view of the evidence of the doctor P. W. 6 and the postmortem certificate Ex. P. 3 in which he has stated that the deceased would appear to have died due to shock and haemorrhage as a result of injuries sustained by him.

15. The prosecution has mainly placed reliance on the evidence of P. Ws. 1 to 4 out of whom P. Ws. 1 and 3 are the injured eye witnesses. P. W. 1 in his evidence has stated after narrating the dispute between the two families regarding the partition of lands and further crossing of the lands belong to the accused as well as the deceased, during the date of incident at about 4 p.m. his father and Chandiran P. W. 4 went to Kathirampatti in order to purchase betel leaves and nuts and around 6 p.m. when P. W. 1 and his mother and his sisters and brothers were in the house they heard the voice of their father from the foot path which passes through the land of the accused. On hearing the said cry of his father he along with his mother went to the scene of occurrence and noticed his father lying on the ground and he saw the accused Sukrivan A2 cutting on the left neck of his father with a Koduval. It is pertinent to mention here in the complaint Ex. P. 1 given by this witness before P. W. 1 he had not told that he has stated in Ex. P. 1 was that he was present in the house along with the mother, his younger sisters and younger brothers, at about 8 p.m. On the date of incident. At that time south of their house in their field they heard the noise of the father shouting 'lyyo, Appa'. They ran towards the aforesaid place. There was moon light. He was running in the front followed by his mother and his father was lying dead at a distance of 250 feet from their house. On seeing them both the accused who were near the dead body came running carrying koduval. They attacked P. Ws. 1 and 3. In the earlier version furnished by the same eye-witnesses P. W. 1 he has not stated that it was accused No. 2 who assaulted his father. It is only an improvement made before the Court. In the cross-examination it was put to this witness that in Ex. P. 1 he did not mention that he saw A2 cutting his father while he went near the scene of occurrence which was denied by him. However P. W. 21 the Investigating Officer has admitted that in Ex. P. 1, P. W. 1 has not mentioned that he saw the accused No. 2 cutting his father. What he has stated in Ex. P. 1 is when they went there they saw their father lying dead. Hence it is only an improvement made by P. W. 1 in his statement before the Court. He has further deposed that when he raised alarm Accused No. 1 cut on his face near left eye with Koduval. On hearing his noise P. W. 4 came to the aforesaid place. He ran away to some other village which is situated at a distance of one k.m. from their house. He has also spoken to the fact that when he was running the Koduval thrown by Accused No. 2 fell on the

back side of his neck. He narrated the occurrence to one Manickam who took him to the chief of the said village and from there he was shifted to Palacode Government Hospital where he was admitted at 3.30 a.m. and treated by a doctor and issued a certified Ex. P. 1. In the cross-examination he has admitted that his statement was recorded on his narration in the hospital. As far as attack on him is concerned this fact finds a place in the complaint Ex. P. 1 given by him before P. W. 16.

16. P. W. 2 is the wife of the deceased who is also an eye-witness. She has fully corroborated the version given by P. W. 1. She has also stated that she followed her son P. W. 1 and her daughter P. W. 3 also went to the place along with them. She noticed accused No. 2 cutting the left neck of the husband with the Koduval. She has also further stated that while her son P. W. 1 was shouting Accused No. 1 was cutting near the left eye on the cheek with weapon Koduval and Accused No. 2 was cutting P. W. 1 on the nape with another Koduval. After that the Accused No. 1 chased P. W. 1 to a distance of about 3/4 k.m. After that accused No. 2 assaulted P. W. 3 her daughter with the handle of the Koduval. On hearing his noise P. W. 4 Chandiran came there and both the accused ran away from that place. On the next day her statement was recorded. As far as the part played by the accused in assaulting P. Ws. 1 and 3 is concerned nothing has been brought on record in the cross-examination of this witness to disbelieve her version. She has fully corroborated the version given by P. W. 1 and their version finds corroboration from Ex. P. 1, the complaint given by the P. W. 1, P. W. 3 is the other eye-witnesses who has also sustained injuries at the instance of Accused No. 2. She has also fully corroborated the version of P. Ws. 1 and 2. According to this witness she has deposed that she saw accused No. 2 cutting her father with M. O. 1 Koduval on the left side of the neck.

When the witnesses raised alarm he cut P. W. 1 near the left side of the ear and on the cheek with M. O.1 Koduval and her elder brother P. W. 1 ran away from that place and Accused No. 2 while P. W. 1 was running threw the Koduval on him which fell on the neck of his elder brother. She has also given evidence that Accused No. 2 assaulted on her forehead with the handle portion of the koduvai and he placed his leg on her head and pressed it. Hearing their noise P. W. 4

Chandiran came there. Even in cross-examination, the version given by this witness regarding the attack of the accused on these witnesses has not been destroyed by the defence. P. W. 4 is one Chandiran who had accompanied the deceased on that day in the evening. According to this witness after purchase of betel leaves and nuts the deceased proceeded by walk. After they reached near the house of the accused he handed over one cigarette to the deceased. After lighting the same he proceeded with another branch from that place and away from that village. It was about 8 p.m. at that time. There was good moon light since the previous day was a full moon day. The deceased went towards his house. While he was proceeding at a distance of 1/2 a furlong he heard the alarm raised by P. W. 3. He came there and saw accused No. 2 pressing his leg on the chest of P. W. 3. P. W. 2 was also present. He pushed accused No. 2. P. W. 2 narrated the incident saying that the accused No. 1 cut her husband and her son and that her son ran away from that place and him to search for him. He searched for P. W. 1 and found him in Natheri Kuluppa in the house of one Perumal. Bleeding injury on the person of P. W. 1, P. W. 5 took him to Palacode Government Hospital. On the next day at about 9.30 a.m. he went to the place where the dead body was lying. In the cross-examination he has stated that when he heard the noise of P. W. 3 and when he came back to the place and went near P. W. 3 he did not notice that koduval in the hands of accused No. 2. But he found A2 beating P. W. 3 by holding her hair. He has also admitted that A2 was also present. After seeing him they ran away from that place. Admittedly this witness has not spoken about the attack of accused on the deceased. He went to the place only after hearing the alarm of P. W. 3. He saw the attack only on P. W. 3. Even according to the version of P. Ws. 1 and 2 immediately after P. W. 1 received injuries he started running away from that place. Hence this witness has no occasion to witness the attack on P. W. 1. As far as attack on P. W. 3 is concerned the version of this witness is consistent with the version given by P. Ws. 2 and 3. Nothing has been elicited in the course of the cross-examination to disbelieve the version given by the witness.

17. The discussion made by us above clearly goes to show that P. Ws. 1 to 4 have consistently stated about the attack made by the accused on the person of P. Ws. 1 and 3 as narrated above in the earlier version given by P.W. 1 there was no reference to the attack on the deceased by Accused No. 2. What P. W. 1 has

stated was after hearing alarm from his father when they went to the place of occurrence they found Chinnathambi lying dead. There was no whisper about accused No. 2 attacking the deceased Chinnathambi. The Sessions Judge has acquitted A1 for an offence punishable under Sections 302 read with 109 and 34, I.P. C. He has convicted accused No. 2 for an offence under Section 302, I.P.C. for committing the murder of Chinnathambi. There is no evidence to show who actually assaulted Chinnathambi. It is true that before the Court they improved the version. But in the earlier version the eye-witnesses have not stated the part played by accused No. 2 when accused No. 1 is acquitted, it will be difficult to convict accused No. 2 for an offence of murder of deceased Chinnathambi. It cannot be said that it was accused No. 2 who committed the murder of Chinnathambi. The complaint was given on the next day morning at about 5 a.m. The incident had taken place at about 8.30 p.m. Even after such a long delay P. W. 1 has not stated the part played by accused No. 2 on the deceased. Under these circumstances we are of the opinion that the Sessions Judge was not justified in convicting the accused No. 2 for an offence of murder punishable under Section 302. Accordingly after reassessing the entire evidence on the basis of the material available on record we are of the opinion that the conviction and sentence imposed on accused No. 2 for an offence under Section 302, I.P. C. should be set aside and accordingly accused No. 2 is acquitted of the offence punishable Section 302, I.P.C. As far as other offences are concerned since they are consistent as per the version given by P Ws. 1 to 4 we hold that the Sessions Judge was justified in convicting the accused No. 1 u/S. 324 and accused No, 2 under Section 324 on two counts. Accordingly the conviction of Accused No. 1 under Section 324 and sentence of three years rigorous imprisonment and conviction of accused No. 2 under Section 324 on two counts and sentence of three years rigorous imprisonment on each count are confirmed. The above sentences imposed on accused No. 2 should run concurrently.

18. This criminal appeal is partly allowed as mentioned above. If the appellants have not undergone the above mentioned sentences and if they are on bail they have to surrender before the Court to undergo the remaining period of sentence.

