

D. Prakasam Vs. State

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Court : Chennai

Decided On : Apr-03-2008

Reported in : 2008CriLJ3471

Judge : P.D. Dinakaran and ;R. Regupathi, JJ.

Acts : Juvenile Justice Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 294, 302, 304 and 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 1039 of 2007

Appellant : D. Prakasam

Respondent : State

Advocate for Def. : N.R. Elango, Addl. Public Prosecutor

Advocate for Pet/Ap. : Sivanandam, Adv.

Disposition : Appeal dismissed

Judgement :

P.D. Dinakaran, J.

1. The appellant, sole accused in Sessions Case No. 93 of 2007, questioning the conviction and sentence passed by the learned Principal Sessions Judge, Vellore, by judgment dated 9-10-2007, has preferred this appeal.

2. The charge against the appellant is that on 16-10-2005 at about 8.30 p.m., with an intention to cause the death of one Mathiazhagan alias Mathi, went to Mathiazhagan's house with his son Sathishkumar and hit Mathiazhagan's head with a fire wood and thereby caused his death and thus, committed an offence punishable under Section 302, I.P.C.

3. The case of the prosecution, as unfolded by the oral and documentary evidence, is stated thus:

(a) P.W. 1, P.W. 2, the deceased Mathiazhagan alias Mathi and the accused Prakasam, all are retired ex-service men. They all reside at Kattupudur village, Vellore Taluk. The deceased Mathiazhagan alias Mathi is the cousin brother of P.W. 1. The deceased Mathiazhagan was having a brother by name Murali, who is no more. P.W. 6 is the sister-in-law of the deceased and she also resides in the same village with her husband. According to P.Ws. 1 and 2, who are eye witnesses and P.W. 6, the accused was having illicit relationship with one Latha, wife of Murali, the brother of the deceased, which was objected by the deceased. Despite the warning given by the deceased, the accused continued with the relationship, due to which, a panchayat was convened, in which the accused was directed to pay fine. Thus, the accused had a grudge against the deceased.

(b) While so, on 16-10-2005 at about 8.30 p.m., P.W. 1 went to the house of the deceased and was talking with him. At that time, the accused, along with his son, Sathishkumar, came there uttering filthy words and saying 'die, at last', he beat him on his head with a fire wood repeatedly. Sathishkumar, son of accused, fisted him on his chest. On seeing the attack, he raised an alarm and P.W. 2, who was nearby, rushed there, shouting not to beat the deceased. Crowd gathered and the accused ran away from the place leaving the firewood at the scene. P.W. 6 also came to the scene on hearing the shouts and found the deceased lying down with head injuries. The witnesses lifted the deceased and poured water in his mouth, but as he did not drink the water, it flowed out. Thereafter, the deceased was taken to Adukkamparai Government hospital at Vellore in an ambulance by the witnesses. P.W. 2 has also spoken on similar lines about the motive and the occurrence proper.

(c) P.W. 3, the medical officer who was on duty, examined the deceased and pronounced him dead. On enquiry, he was informed that two known persons assaulted the deceased with a wooden log at about 8.30 p.m. on 16-10-2005. P.W. 3 issued Ex. P. 2, accident register copy and sent an intimation, Ex. P. 3 to the police.

(d) P.W. 1, thereafter, went to the police station and lodged the complaint, Ex. P. 1. P.W. 11, Sub-Inspector of Police, Vellore South Police Station, on receipt of Ex. P.1, registered a case in Crime No. 403 of 2005 for offences under Sections 294(b), 323, 302, I.P.C. He prepared printed First Information Report, Ex. P. 17 and sent the same to Court as well as copies to higher officials.

(e) P.W. 12, after obtaining a copy of the first information report at about 1.10 a.m. on 17-10-2005, proceeded to the scene of occurrence, observed the same and prepared observation mahazar, Ex. P. 10 and drew a rough sketch, Ex. P. 18. He examined P.W. 7 and others present at the spot and recorded their statements. In the presence of witnesses, he seized M. Os. 4 and 5, bloodstained earth and sample earth and M.O. 1, blood-stained firewood from the scene of occurrence. He, thereafter, examined P.Ws. 2, 3, 6 and others and recorded their statements. He went to the mortuary at the hospital and conducted inquest over the dead body of the deceased Mathiazhagan between 6.00 a.m. and 9.00 a.m. in the presence of panchayatdars and witnesses. Ex. P. 19 is the inquest report. The body was thereafter sent through a police constable with a requisition, Ex. P. 4, to the medical officer to conduct autopsy.

(f) On receipt of the requisition, P.W. 4, Civil Assistant Surgeon attached to Government Vellore Medical College Hospital, conducted autopsy on the dead body and found the following external injuries:

(1) Laceration of scalp in the Midline of head measuring 10 x 1 x 1 cm.

(2) Abrasion forehead on right side measuring 3 x 0.5 cm.

(3) Abrasion front of chest on left side measuring 5 x 0.5 cm.

The doctor issued Ex. P. 7, post-mortem certificate, reserving his opinion about the cause of death.

(g) P.W. 12 continued his investigation and recovered M. Os. 2 and 3, lungi and shirt of the deceased, after the same was produced by the police constable, who was present at the time of post-mortem and sent the same to Court under Form 95. At about 6.00 p.m. on 17-10-2005, on information received, he arrested the accused near Nanjukondapuram - Amirthi Road in the presence of P.W. 8 and another and recorded his confession statement. He, thereafter, sent the material objects to Court with a requisition, Ex. P. 13, to send them for chemical examination. He also issued a requisition, Ex. P. 14, to send the hyoid bone of the deceased for chemical examination. He examined P.Ws. 7, 8 and others and recorded their statements. He also examined P.W. 3, the doctor who examined the deceased and pronounced him dead and obtained Ex. P. 2, accident register copy. On 29-10-2005, he examined P.W. 4, post-mortem doctor and received Ex. P. 7, post-mortem certificate. On 26-11-2005 he examined P.W. 9 and another and recorded their statements.

(h) In the meantime. P.W. 4, the medical officer, received Ex. P. 5, Hyoid Bone report dated 9-11-2005, wherein it is stated that no injury was found in the hyoid bone and Ex. P. 6. Toxicology report dated 16-11-2005, wherein it is stated as hereunder:

- (1) Stomach with contents detected 817 mg. of ethyl alcohol but not other poison.
- (2) Intestine with contents detected 104 mg. of ethyl alcohol but not other poison.
- (3) Liver and kidney detected 242 mg. of ethyl alcohol but not other poison.
- (4) Blood detected 70 mg. (%w/v) of ethyl alcohol but not other poison.
- (5) Preservatives - Did not detect ethyl alcohol.

Based on the above reports, P.W. 4 has issued his opinion as to the cause of death that the deceased died of head injury (subdural haematoma) about 12 to 16 hours prior to post-mortem.

(i) P.W. 12, thereafter, obtained Ex. P. 8, biologist report and Ex. P. 9, serologist report and on completing investigation, laid the charge sheet against the appellant and the other accused under Sections 302, 34, I.P.C. On 6-12-2005.

(j) The learned Magistrate committed the case to Court of Session and since the other accused was a minor at that time, the offence committed by him has been dealt with separately as per the Juvenile Justice Act. The case against the appellant/accused was taken up on file in S.C. No. 93 of 2007 and since he denied his complicity, the trial commenced. At the time of trial, the prosecution examined P.Ws. 1 and 12, marked Exs. P.1 to P. 19 and produced M. Os. 1 to 5. After the completion of evidence on the side of prosecution, the accused was questioned under Section 313, Cr.P.C. on the incriminating materials appearing against him in the evidence of prosecution witnesses. He denied them as false, but did not examine any witness on his side. However, he marked Exs. D. 1 to D.8, the photographs and negatives, during the cross-examination of P.W. 2 and Ex. D. 9, rough sketch, during the cross-examination of P.W. 7.

(k) The trial Court, on the basis of the evidence adduced and on hearing the submissions of the learned Counsel for both sides, found the appellant/accused guilty of the offence of murder and convicted and sentenced him as referred to above. Hence, the present appeal has been brought forth before this Court.

4. Mr. Sivanandam, learned Counsel for the appellant, submits that,

(i) P.Ws. 1,2 - eye witnesses and P.W. 6 - hearsay witness, are close relatives of the deceased and hence, they are interested witnesses;

(ii) the motive as claimed by the prosecution has not been proved by examining Latha, with whom the accused was alleged to have had illicit intimacy or much less one of the panchayatdars who imposed fine on the accused for the same;

(iii) alternatively, he submits that even if the case of the prosecution is taken to be true, the appellant came to the scene of occurrence unarmed and in view of the sustained provocation, he attacked the deceased with a firewood provocation, he attacked the deceased with a firewood which was lying there. Moreover, the

deceased was also in inebriated condition and naturally his resistance level would have been low and he would not have sustained even a minor blow. Hence, the act committed by the accused could only attract lesser offence.

5.1 On the other hand, Mr. N.R. Elango, learned Additional Public Prosecutor, sustaining the judgment of the trial Court, submits that the evidence of the eye witnesses are cogent, natural and trustworthy and in view of the settled proposition, their evidence cannot be brushed aside merely on the ground of interested witnesses and the prosecution has also established the motive part of the occurrence. Therefore, the learned Additional Public Prosecutor submits that the impugned judgment is well-founded and no interference is called for.

5.2 To the alternative submission, the learned Additional Public Prosecutor submits that in view of the motive being strongly established, though the accused was unarmed, he came there only with a view to attack the deceased, which is evident from his conduct and hence, the offence of murder is positively made out.

6.1 The prosecution has examined P.Ws. 1, 2 and 6 to establish that it was the appellant/accused who inflicted injuries on the deceased along with his son, which resulted in his death. P.Ws. 1 and 2 are the direct eye witnesses to the occurrence and P.W. 6 is the witness who came to the scene of occurrence on hearing the shouts. According to P.W. 1, when he was talking with the deceased in front of the house of the deceased, the accused and his son came there shouting filthy words against the deceased and immediately, the accused took a fire wood and beat the deceased on his head. The juvenile accused, viz., son of the appellant Sathishkumar, beat him on his chest and thereafter, the deceased fell down.

6.2 According to P.W. 2, when he came out of his house, he saw the deceased talking with P.W. 1 in front of his house and at that time, the accused came there uttering filthy words against the deceased and also shouted that it was because of him, he lost his reputation in the village and hence, he has to be finished off, then only he can live in peace. It is his further evidence that immediately, the accused took the firewood which was lying there and repeatedly beat the deceased on his head and that on receipt of the first hit, the deceased raised alarm and again the accused beat him and when the deceased was about to fall down, the juvenile

accused fisted him on his chest. P.W. 2 has further stated that he came running towards the scene saying not to beat the deceased and that the accused after beating the deceased, dropped the wooden log at the scene and went away by uttering 'get lost'.

6.3 P.W. 6 in her evidence has stated that she came to the scene on hearing the shouts and saw the accused lying down with bleeding injuries on his head. It is the further evidence of P.Ws. 1, 2 and 6 that they lifted the deceased and found him dead. Thereafter, the complaint was lodged at the police station. On going through the evidence of P.Ws. 1, 2 and 6, we find that it is cogent, natural and trustworthy.

7.1 Merely because the witnesses are related to the deceased, their evidence cannot be rejected, since the law on the point is well settled that relationship is not a factor to affect credibility of a witness and it is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person.

7.2 At this juncture, it is apposite to refer to the decisions of the Apex Court. In *Dalip Singh v. State of Punjab* : [1954]1SCR145 , the Apex Court has observed as hereunder:

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to which to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

7.3 Again in *Masalti v. State of U.P.* : [1964]8SCR133 , the Apex Court observed that (para 14):

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

7.4 Further, in *Pulicheria Nagaraju v. State of A.P.* : 2006 CriLJ3899 , it has been observed:..that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.

7.5 In the instant case, though P.Ws. 1, 2 and 6 are closely related to the deceased, their evidence as regards the occurrence is consistent and nothing concrete was elicited in favour of the accused in spite of lengthy cross-examination running to several pages. On going through their evidence, we do not find any infirmity or inconsistency and hence, we accept their evidence and hold that the learned trial Judge was justified in basing his conclusion relying on their evidence.

8. The contention that the prosecution has not established the motive part of the occurrence by examining Latha, with whom the accused was alleged to have had illicit relationship or by examining the panchayatdars who have imposed fine on the accused for having such relationship, does not hold good, in view of the direct evidence regarding the occurrence proper. In a case where direct evidence of eye

witnesses is available, motive lacks significance and it can be used only by way of corroboration. Hence, the non-examination of Latha or any of the panchayatdars does not affect the substratum of the prosecution case that it was the accused and none else who attacked the deceased on that fateful day.

9.1 The question that is to be decided is whether the act committed by the accused attracts the offence of murder or any lesser offence. Even as per the evidence of eye witnesses, the accused came to the scene unarmed and after abusing the deceased in filthy language, he took the firewood which was lying there and inflicted a blow on his head. According to the post-mortem doctor, P.W. 4, he found three injuries on the body of the deceased and that injury No. 1 could have been caused with a wooden log like M. O. 1, injury No. 2 could have been sustained when the deceased moved aside while he was attacked and injury No. 3 could have been sustained due to fall. From the above evidence of P.W. 4. it can be easily presumed that the first injury could have been caused by appellant/accused and the second injury could be attributed to the juvenile accused. The third injury, obviously after the deceased Tell down.

9.2 Even though it is assumed that the appellant had inflicted only one blow, the words he uttered before and after he mounted the attack on the deceased clearly shows that he had the intention to cause bodily injury which is likely to cause death. It is to be noted here that, just prior to the occurrence, the deceased had consumed alcohol, as is evident from the evidence of the post-mortem doctor and the toxicology report, Ex. P. 6, already extracted above. Hence, the possibility of the deceased breathing his last immediately after the attack on his head by the accused due to intoxication cannot be ruled out. In such a view of the case, we are of the considered opinion that the offence committed by the accused, at best, could only fall under Section 304, Part I, I.P.C. and for which, he is sentenced to undergo rigorous imprisonment for a period of seven years.

10. In result, the conviction of the appellant/accused under Section 302, I.P.C. is set aside and instead, he is convicted under Section 304, Part I, I.P.C. and for the said conviction, he is sentenced to undergo rigorous imprisonment for a period of seven years. With this modification, the appeal is dismissed.

