

Sambath Kumar Vs. State

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Court : Chennai

Decided On : Jun-17-2008

Reported in : 2009CriLJ520

Judge : P.D. Dinakaran and ;K.N. Basha, JJ.

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

Appeal No. : Cri. Appeal No. 690 of 2006

Appellant : Sambath Kumar

Respondent : State

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

Advocate for Pet/Ap. : S. Samuel Rajapandian, Adv.

Disposition : Appeal dismissed

Judgement :

P.D. Dinakaran, J.

1. Challenging the conviction and sentence dated 30.3.2004 imposed on the appellant/accused in S.C. No. 107 of 2003 on the file of learned Sessions Judge, Perambalur, convicting him for the offence under Section 302, IPC and sentencing

to undergo life imprisonment with fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for three months, the accused has come forward with the present appeal.

2. The allegation in the charge framed against the accused is that due to previous enmity with the deceased with respect to money transaction, during the midnight on 20.4.2003, when the deceased Ramesh was sleeping in the terrace of a Community Hall at Thirumalapadi Village, the accused cut the deceased with aruval resulting in his death and thereby alleged to have committed an offence punishable under Section 302, IPC.

3. The prosecution case, which rests upon the evidence of eye-witnesses, is as under:

(a) P.Ws. 1 to 3 are the independent eye witnesses, who deposed that they along with one Sampath, Ravi and the deceased/ Ramesh were helping one Mahesh, who was doing illicit arrack business. As the Naducauvery Police were searching to apprehend them, they were absconding. On the date of occurrence, when they were consuming arrack, the accused demanded the deceased to return the money given by him for consuming arrack, for which, the deceased scolded the accused using filthy words and the accused threatened him that he would do away with him. At about 9.30 p.m., the accused attempted to cut the deceased with aruval and the same was averted by the witnesses. Thereafter, they went to Thirumalapadi and slept in the terrace of a community hall. At about 12.00 p.m., on hearing a sound, they woke up and saw the deceased lying down and the accused, sitting on him and caught hold of the deceased with his left hand, inflicted cut injuries with an aruval on the deceased with his right hand. When they shouted at the accused not to cut, the accused escaped from the place of occurrence. The deceased was found dead. P.W.1 along with P.W.3 went to the house of the deceased and informed his parents. On 21.4.2003, at about 9.00 a.m., P.W. 1 went to Thirumanoor Police Station and gave oral complaint, which was reduced into writing by the Inspector. Ex.P1 is the complaint.

(b) P.W.4, father of the deceased, deposed that the deceased was doing agricultural work and was assisting one Mahesh in his illicit arrack business. He

was informed by P.W. 1 and P.W.3 about the death of the deceased due to the money transaction between the deceased and the accused.

(c) P.W.5 attested the observation mahazar and seizure mahazar. P.W.6, Village Administrative Officer attested the confession statement of the accused, Ex.P4.

(d) P.W.8 is the Sub-Inspector of Police, who recorded the statement of P.W. 1, based on which he registered a case in Crime No. 118 of 2003 under Section 302, IPC. Ex.P8 is the printed FIR. He forwarded the statement of P.W. 1 and FIR to the Court and to the Inspector of Police, P.W.9, in-charge of Thirumanoor Police Station.

(e) P.W.9, on receipt of the FIR, reached the scene of occurrence and prepared observation mahazar, Ex.P2. He drew the rough sketch, Ex.P9. He caused the photographs of the body of the deceased being taken. The photos and negatives are marked as M.O.6. He conducted inquest over the body of the deceased. Ex.P. 10 is the inquest report. He sent the body of the deceased for conducting autopsy, with requisition Ex.P6. He recorded the statements of P.Ws. 1 to 4 and others. He sent the material objects to the Court under Form 95. He arrested the accused on 22.4.2003 at about 4.00 p.m., and recorded his confession, Ex.P4. Based on his confession, he recovered the aruval, M.O.5 under mahazar, Ex.P5. He sent the accused to judicial custody.

(f) In the meantime, on receipt of Ex.P6, requisition for post-mortem, P.W.7, Medical Officer attached to the Ariyalur Government Hospital, conducted autopsy over the dead body of the deceased and opined that the deceased would appear to have died of injury to blood vessels haemorrhage, shock and death. Ex.P7 is the post-mortem certificate, issued by the doctor.

(g) P.W. 10, Inspector of Police, on assuming charge after his return, continued the investigation. He sent the blood stained clothes of the deceased and tiles to the Court for chemical analysis. He recorded the statement of the Medical Officer. He completed the investigation on 30.5.2003 and filed the charge sheet under Section 302, IPC.

4. The case was committed to Court of Session and charge was framed and since the accused denied his complicity in the offence, the case was taken up for trial. In order to substantiate the charges levelled against the accused, the prosecution examined P.Ws.1 to 10, filed exhibits P1 to P13 and marked material objects M.Os.1 to 7.

5. After completion of the prosecution witnesses, when the accused was questioned under Section 313, Cr.P.C. as to the incriminating circumstances that appeared against him, the accused denied them as false and pleaded not guilty. He further stated that it is only Mahesh who has committed the offence. There was illicit intimacy between Mahesh and the wife of deceased /Ramesh and at the instance of Ramesh when the accused questioned Mahesh about the illicit relationship, he threatened Ramesh with dire consequence. On the date of occurrence, Mahesh along with P.Ws. 1 to 3 caused cut injuries to the deceased and since he saw them, they chased him, but escaping from their clutches he reached his sister's house at Thirumanamedu and took shelter. He also narrated the entire incident to his sister. On the next day he was called by the Police and before them he narrated the things. He did not produce the Aruval in the presence of VAO from the river bank and he is in no way connected with the crime. However, neither any witness was examined, not any documentary evidence was produced on his side to support his version.

6. The learned trial Judge, on perusal of the materials, oral and documentary and after hearing both sides, convicted and sentenced the appellant as aforementioned. Hence, the present appeal.

7. A perusal of the evidence of P.W.7, Dr. Mustafa, the Doctor who conducted the Post-mortem would show that the cut injuries found in the neck are of bone depth, which manifestly reveal that major blood vessels between the Head and Body could have been cut, due to which, there would have been bleeding, which might have resulted in the death. During cross examination, the Doctor would admit that the sharp edged Aruval would cause only cut injuries. Thus the medical evidence clearly proves that the injuries are possible by cut with Aruval and the injuries sustained by the deceased are sufficient to caused death and, therefore, it is a

homicidal death.

8. Learned Counsel appearing for the appellant contended that there are contradiction in the entries made as to the timings in the inquest report, requisition for conducting post-mortem and in the post-mortem certificate and, therefore, the evidence of the Investigating Officer and the Doctor in this respect is not trustworthy. Further, even according to the Post-mortem Certificate, all the injuries are lacerated injuries and, therefore, it cannot be said that it is only due to the overt acts as attributed to him by the eye-witnesses, the death could have occurred.

9. On the other hand, the learned Additional Public Prosecutor contended that there is no contradiction in the medical records and there are eye-witnesses to the occurrence and the overt acts attributed to the accused are corroborated by medical evidence, and therefore, no interference is called for with respect to the conviction and sentence imposed by the Sessions Court.

10. As far as the motive is concerned, the prosecution projected money dispute as the motive for the occurrence. As per the complaint Ex.P. 1, It is seen that the accused, deceased and other witnesses were used to distil and sell the arrack on behalf of one Mahesh. The accused and the deceased were working under the same person and they were friends. Since Nadu Cauvery Police searched for the accused, they left Melathiruppanthuruthi and on 20.4.2003 at about 8.30 p.m., the accused, deceased and witnesses came to Kandiyur Brandy Shop. Near the Brandy Shop, the accused and the deceased picked up quarrel regarding the payment of money. The accused attempted to assault the deceased with Aruval, but the witnesses pacified them. This aspect of motive is corroborated by P.Ws. 1 to 3 in their evidence.

11. As far as the manner of occurrence is concerned, the occurrence took place on 20.4.2003 at about 12'O clock in the midnight. The accused, deceased and P.Ws. 1 to 3 were sleeping in the upstairs of the community hall at Thirumalapadi. At about, 12'O clock in the midnight, the witnesses heard the noise of quarrel and found the accused catching hold of the deceased with his left hand and repeatedly cutting the deceased with aruval in the neck. When the witnesses shouted, the

accused left the place with the aruval. The deceased Ramesh died on the spot. Later, P.W. 1 and P.W.3 came to the house of the deceased and informed his parents about the occurrence. Again the witnesses brought the parents to the place of occurrence and, thereafter P.W. 1 lodged the complaint before the Thirumanur Police. Though it is a night occurrence, the identity of the accused is categorically deposed by the eye-witnesses P.Ws 1 to 3 and in this respect no doubt can be entertained, as they were all friends and working under the same person. The accused has also not disputed his identity, but denied the entire occurrence. The overt acts attributed on the accused is fortified by the evidence of the eyewitnesses.

12. Though according to the accused as seen from his answers given during the questioning under Section 313, Cr.P.C, that it is the Mahesh and P.Ws. 1 to 3, who killed the deceased, the presence of the said Mahesh has not been deposed by any of the witnesses. Though the accused had stated that when he witnessed the murder of the deceased by the said Mahesh and the witnesses, they chased him and he ran to Thimmanamedu i.e., to his sister's house, from where he was taken by the Police, he has not even chosen to examine his sister to prove his version. In this respect, it will be apt to refer to the decision of the Supreme Court in State of Rajasthan v. Kashi Ram : AIR 2007 SC144 , wherein it has been held that the failure of the accused to give satisfactory explanation to an incriminating circumstance which was within his special knowledge amounts to failure to discharge the onus which lies on accused and that itself provides an additional link in the chain of circumstances proved against the accused. Therefore, the defence version made by the accused for denial of his involvement in the commission of offence, which is not even attempted to be proved, is not sustainable.

13. P.W.9, Investigating Officer, on 22.4.2003 at about 4.00 p.m., arrested the accused on the northern bank of Kollidam River in the presence of witnesses Manokaran (VAO), Karuppiah and Rathinam. They also support the prosecution case regarding arrest and voluntary confession made by the accused. Being independent witnesses, there cannot be any necessity for them to implicate the accused falsely. On the basis of the confession, the accused led the police party and witnesses to the Throwbathi Amman Temple and produced the Aruval, M.O.5.

The admissible portion of the confession is marked as Ex.P.4. The recovered articles were sent for chemical analysis and the report received revealed the bloodstains found in the shirt, lungi, aruval and towel. Eventhough, the prosecution has failed to produce the serological report to corroborate and conclude that it is the human blood of a particular group to fix the concrete medical evidence to bring home the guilt of the accused, yet, as there are other medical evidence and direct eye-witnesses to the occurrence, there cannot be any difficulty to hold that it is the accused who had committed the crime.

14. As P.Ws 1 to 3 are eye-witnesses to the occurrence, who withstood the cross-examination as well, the learned Counsel for the appellant contended that there is material contradiction in the entries made as to the timings in the inquest report, requisition for conducting post-mortem and in the post-mortem certificate, even a bare perusal of the same, namely Exs P. 10 Ex.P.6 and P. 7 respectively would go to show that there is no such contradiction at all. In Ex.P. 10 Inquest Report, Clause XXVI, it is mentioned that the inquest was conducted between 12.00 noon and 4.00 p.m., on 21.4.2003. As seen from Ex.P.6, it is clear that requisition made on 21.4.2003, for conducting autopsy was received by the Doctor at 6.15 pm., on that day itself. As per Ex.P.7, Postmortem Certificate, it is seen that the Postmortem had began at 11.00 a.m., on 22.4.2003. Therefore, as there is sequence in the events, we do not see any contradiction at all.

15. Another fragile attempt made by the learned Counsel for the appellant is that according to the Post-mortem Doctor the injuries are only lacerated injuries and, therefore, the death could not have been caused by the overt acts of the accused alone. In this respect, a perusal of the evidence of the Doctor who conducted the Postmortem would show that the cut injuries found in the neck are of bone depth, which manifestly reveal that major blood vessels between the Head and Body could have been cut, due to which, there would have been bleeding, which might have resulted in the death. During cross-examination, the Doctor would admit that the sharp edged Aruval would cause only cut injuries. He also explained that since he noticed number of injuries side by side, he had mentioned the injuries as lacerated injuries. Therefore, this argument of the learned Counsel for the appellant also falls to ground.

16. Finally, with regard to the plea of the counsel for the appellant to invoke any of the Exception to Section 300, IPC, it has to be noticed that five hours prior to the occurrence, there was a wordy quarrel between the accused and the deceased, and the deceased abused the accused with filthy language, and the accused also attempted to inflict injuries with Aruval, but the witnesses have avoided and pacified them and thereafter enraged by the attitude of the deceased, with a premeditation and preplan concealed the weapon (M.O.5, Aruval) with him and when all of them were sleeping in the Community Hall, the accused did not sleep and in the midnight he killed the deceased by cutting with M.O.5 Aruval. Considering the deliberate murder with premeditation, and the knowledge and intention on the part of the accused to do away the deceased, we are of the opinion that the Trial Court is perfectly right in convicting the appellant for the offence punishable under Section 302, IPC and sentencing him to life imprisonment thereunder.

17. In the result, this Criminal Appeal is dismissed, confirming the conviction and sentence made in S.C. No. 107 of 2003 on the file of learned Sessions Judge, Perambalur.

18. The Bail Bonds executed by the accused shall stand cancelled, and the learned Sessions Judge shall take necessary steps to secure the presence of the accused to commit him to prison, to undergo the remaining period of sentence.

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