

Nagappan Vs. State Rep. by Circle Inspector of Police

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Court : Chennai

Decided On : Feb-15-2006

Reported in : [2007(3)JCR162(Mad)]

Judge : M. Karpaga Vinayagam and ; AR. Ramalingam, JJ.

Appellant : Nagappan

Respondent : State Rep. by Circle Inspector of Police

Disposition : Appeal dismissed

Judgement :

M. Karpaga Vinayagam, J.

1. The appellant Nagappan, for having caused the death of his wife Muruvammal, has been convicted for the offence under Sections 302 and 506(ii) IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/-, in default to undergo RI for three months. Challenging the same, this appeal has been filed.

2. The short facts leading to the conviction are as follows:

(a) Nagappan, the accused is the husband of the deceased Muruvammal. They got married ten years prior to the occurrence. Out of their wedlock, two children were born. Both of them were residing in the village called Kolathur.

(b) The accused used to do coolie work in Chennai. He also used to go to the village and visit his family. In the course of time, the accused suspected fidelity of his wife. Frequently, there used to be quarrel between the accused and the deceased in that regard.

(c) The fateful occurrence took place on 16.2.1999 at about 12.00 noon. According to the prosecution, the accused gave cuts to the deceased indiscriminately on the vital parts of the body by using M.O.I. Vettukathi. On seeing this, PW 3 Tmt. Ellammal @ Amirthammal, the mother of the accused intervened and tried to prevent the accused from attacking the deceased further and in that process, she was also attacked by the accused. She came out and cried aloud.

(d) PW 1 Shanmugam, the brother of the deceased happened to come to the house of the accused and he witnessed the occurrence. When all of them cried aloud, the accused came out of the house and ran away from the scene of occurrence. Though the villagers chased him, he threatened them not to follow him and so, the villagers could not catch him. Then PW 1 came back to the house and found the deceased dead.

(e) Thereafter, PW 1 went to the Police Station and gave a complaint to PW 6 Sub-Inspector of Police. A case was registered for the offence under Section 302, IPC.

(f) PW 8 Inspector of Police took up investigation and came to the scene of occurrence. He prepared the observation mahazar Ex. P 2 and rough sketch Ex. P 7. He conducted inquest on the same day and examined PW 1 Shan-mugham and others. He recovered M.O. 3 blood-stained earth and M.O. 4 sample earth. He also recovered M.O. 1 knife. After the inquest, the dead body was sent to Doctor for post-mortem.

(g) PW 4 Doctor J.R.C. Sekaran, attached to the Government Hospital Madurantakam conducted post-mortem and issued Ex. P 4 post-mortem certificate. The opinion given by PW 4 Doctor is as follows:

The deceased would appear to have died of shock and haemorrhage sustained due to injuries to major blood vessels which supply to the brain and injury No. 2 on

the spinal cord-vital organ.

(h) The accused was arrested on the next day i.e. on 17.2.1999 and M.O 8 blood-stained lungi and M.O. 9 blood stained shirt were recovered from him. The material objects were sent for chemical analysis.

(i) After completion of the investigation, PW 8 Inspector of Police filed the charge-sheet for the offences under Sections 324, 302 and 506 (ii), IPC.

(J) During the course of trial, on the side of the prosecution, PWs 1 to 8 were examined; Exs. P 1 to P 13 were filed and M.Os 1 to 9 were marked.

(k) When the accused was questioned with regard to incriminating materials against him under Section 313, Cr PC he pleaded innocence. As such, the case of the defence is one of total denial. On the side of the defence, no witness was examined.

(1) The trial Court, after analysing the evidence available on record, found the accused guilty under Sections 302, and 506 (ii), IPC and convicted him thereunder, and acquitted the accused for the offence under Section 324, IPC, since PW 3 Ellammal @ Amirthammal, the injured witness turned hostile. The conviction and sentence as aforementioned, is the subject matter of appeal before this Court.

3. K. Veeraraghavan, learned Counsel for the appellant would take us through the entire evidence and contend that the evidence of PW 1 is not reliable, especially when he is an interested witness being the brother of the deceased and as such, the accused is liable for acquittal. In support of his contention, learned counsel has relied upon the decisions of the Supreme Court in *Marudanal Augusti v. State of Kerala* : 1980 CriLJ446 , *Sohan v. State of Haryana* 2001 SCC (Cri) 587, *Joseph v. State of Kerala* : 2001 CriLJ1707 and *Kunju Muhammed v. State of Kerala* 2004 SCC (Cri) 1425, in order to establish that the evidence of a single eye-witness cannot be relied upon fully in the absence of corroboration and the prosecution case cannot be accepted in the absence of examination of material witnesses.

4. On these aspects, we have heard Mr. R. Raja, learned Additional Public Prosecutor.
5. We have given our thoughtful consideration to the rival contentions.
6. According to the prosecution, the accused, who is the husband of the deceased, on suspecting the fidelity of his wife, gave three cuts indiscriminately on the vital parts of the body of the deceased, with the result, the deceased died on the spot.
7. The occurrence was witnessed by PW 1, the brother of the deceased and PW 3 the mother of the accused. While the accused was attacking the deceased, PW 3 intervened and in that process, PW 3 also sustained injuries but unfortunately, PW 3, turned hostile and as such, the charge under Section 324, IPC as against the accused had not been proved. Ultimately, he was acquitted of the charge under Section 324, IPC.
8. The only evidence available is the testimony of the single eye-witness, viz. PW 1. It is true that the evidence of an interested witness has to be analysed cautiously and if there is corroboration, that can be taken into consideration to test the reliability of the said witness.
9. The law is well settled that merely because a witness is a relative of the deceased, his evidence cannot be rejected on that score.
10. It is ruled by the Supreme Court as well as by this Court in *Khaja Hussain v. Inspector of Police* 2005 MLJ (Cri), 1039, that oral testimony of witnesses may be classified into three categories, viz.--(1) wholly reliable. (2) wholly unreliable, and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court may not find any difficulty in coming to the conclusion either to convict or to acquit the accuse. In the second category, the Court equally has no difficulty in coming to its conclusion., It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.
11. If the above principles are taken into consideration, in our view, the testimony tendered by PW 1 cannot be brushed aside as his evidence is beyond suspicion.

Furthermore, his evidence has been sufficiently corroborated by PW 4 Doctor, who conducted the post-mortem. That apart, the blood stains found in the clothes of the accused tallied with the blood group of the deceased as per the Serologist's report Ex. P 13. The oral testimony of PW 1 which has been corroborated by the medical testimony of PW 4 Doctor is fully in consonance with the complaint given by PW 1 to PW 6 Sub-Inspector of Police.

12. Merely because PW 1 is the brother of the deceased, we are unable to hold that his evidence is unreliable. On the other hand, PW 1, immediately after the occurrence, rushed to the police station and gave a complaint to the police which was registered by PW 6 Sub-Inspector of Police for the offence under Section 302, IPC.

13. All the decisions relied on by the learned Counsel for the appellant would speak about the principles laid down by the Supreme Court that if there is suspicion in lodging the FIR or if there is any infirmity in the evidence of the single eye-witness, the prosecution case has to be established. But, that is not the case here.

14. We feel that the evidence of PW 1, who is the author of Ex. P 1 complaint, is wholly reliable. Further, his evidence has been corroborated by the material particulars like post-mortem certificate evidence of PW 4 doctor, who conducted the postmortem' and also the report of the Serologist.

15. It has been pointed out by the learned Counsel for the appellant that even though the prosecution case is that PW 3 was also attacked, she turned hostile and there is no evidence to show as to whether PW 3 had been examined by a Doctor for the injuries sustained by her.

16. Unfortunately, the prosecution has failed to adduce any material to show that PW 3 was treated by a Doctor for the injuries sustained. But, the learned Additional Public Prosecutor, on the basis of the case diary available with him and also the Court record, would submit that PW 3, the injured witness was sent to the hospital where treatment was given and accident register was also issued. When those material were collected by investigating agency, there is no reason as to why

PW 8 Inspector of Police did not choose to refer the same in his chief examination. Further, the Doctor, who examined PW 3, had not been examined and the copy of the accident register had also not been filed. But the failure on the part of the prosecution to prove that PW 3 was attacked by the accused, would not affect the case of the prosecution especially when PW 3 turned hostile.

17. As indicated above, we feel that PW 1 is a reliable witness and his evidence was corroborated by the material particulars. As a matter of fact, the occurrence took place inside the house of the deceased at about 12.00 noon and it is natural for PW 1 who is the brother of the deceased, to come to the house of the deceased, since he happened to know that there was a quarrel between the accused and the deceased even two days prior to the date of occurrence. There is no reason for him to falsely implicate the accused, who is none else than his sister's husband.

18. In the result, the appeal is dismissed confirming the conviction and sentence imposed on the appellant by the trial Court. Since the appellant is on bail, the trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence.

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