

Nathan Alias Christopher Yoganathan and Etc. Vs. State

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Court : Chennai

Decided On : Jul-05-2006

Reported in : 2006CriLJ3610

Judge : R. Balasubramanian and ;M. Jeyapaul, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302 and 449;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal Nos. 354 and 523 of 2004 and 265 of 2005

Appellant : Nathan Alias Christopher Yoganathan and Etc.

Respondent : State

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

Advocate for Pet/Ap. : S. Panneerselvam, ;P. Srinivasan and ;K.V. Sridharan,
Advs.

Disposition : Appeal allowed

Judgement :

M. Jeyapaul, J.

1. The third accused has preferred Criminal Appeal No. 354 of 2004, the fifth accused Criminal Appeal No. 523 of 2004 and the first and the fourth accused

Criminal Appeal No. 265 of 2005 as against the judgment of conviction and sentence recorded by the trial Judge. The second accused has not chosen to prefer any appeal as against the judgment of conviction and sentence passed by the trial Judge.

2. The charges as against A. 1 to A. 5 are that on 13-8-2001 at about 10.15 p. m. in front of the shop of Sekar located at Door No. 13, Gandhi Road, Taramani 100 feet Road, Velachery, the accused 1 to 5 formed an unlawful assembly and committed rioting armed with deadly weapon and thereby committed an offence punishable under Section 148 of the Indian Penal Code; during the course of the same transaction A. 1 to A. 3 trespassed upon the mechanical shop of Sekar and thereby they committed an offence punishable under Section 449 of the Indian Penal Code; during the course of the said transaction, all the accused 1 to 5 with an intention to cause the death of Sekar attacked him with lethal weapons at the afore-said place of occurrence and committed murder punishable under Section 302 of the Indian Penal Code.

3. The brief text of the prosecution case as unfolded by the witnesses examined on their side is as follows:

Anbu, P.W. 5 is the brother of the deceased Sekar. Veerabadran, P.W. 1 was an employee working in the mechanic shop run by the deceased-Sekar at Taramani. The deceased-Sekar having taken the premises of Guru P.W. 2 was running a mechanical shop over there at Taramant.

4. On 13-8-2001 at about 10.15 p. m., P.W. 1 and P.W. 5 along with the deceased-Sekar were present in the said mechanic shop. P.W. 5 has deposed before the Court that the first accused Rangan came along with four other accused, whom he could not identify, to the mechanic shop of Sekar and the first accused attacked the said Sekar. The said Sekar started running. The other persons who came along with A. 1 also attacked his brother Sekar and thereby caused his instantaneous death. Veerabadran, P.W. 1, the employee of Sekar has stated that about ten persons came to the shop of Sekar on the fateful day with a mask on their face. Therefore, he could not identify the assailants who came and attacked Sekar, the owner of the shop.

5. Guru P.W. 2 was treated as hostile as he had deposed that he was not aware of anything about the occurrence. Seetha-raman P.W. 3 heard some sound from the mechanic shop of Sekar at about 10.15 p.m. on 13-8-2001. Five persons came chasing the said Sekar and attacked him indiscriminately and caused his death. He identifies the accused 1 to 5 as the assailants who caused the death of Sekar.

6. Anbu P.W. 5 went to the Velachery Police Station at about 10.45 p. m. on 23-8-2001 and gave a statement to the Inspector of Police P.W. 8, who recorded the statement Ex. P.2 and registered a case in Crime No. 752 of 2001 under Sections 147, 148 and 302 of the Indian Penal Code. He prepared printed FIR Ex. P. 11 and despatched the same to the learned Judicial Magistrate and the copies thereof to the higher officials concerned.

7. At 11. 15 p. m. on the said date, P.W.8 rushed to scene of crime and prepared observation mahazar Ex. P. 12 in the presence of Krishnan P.W. 4. He also recovered blood stained soil MO-1, sample earth MO-2 and blood stained lungi MO-3 under relevant seizure mahazar Ex. P. 1 in the presence of PW.4.

8. P.W. 8 held inquest on the dead body of Sekar in the presence of Panchayatdars at about 11.30 p. m. the said day and prepared inquest report Ex. P. 13.

9. Dr. Ravindran P.W. 7 received a requisition from P.W. 8 and commenced post mortem examination on the dead body of Sekar at 2.20 p. m. on 14-8-2001. He found the following injuries and other features on the dead body of Sekar:

Injuries:

(1) Abrasion 10x6 cms over the outer aspect of right buttock.

(2) Multiple incised scratches (8 in numbers) of varying sizes 150 6 x 0.3 cms seen over the upper 3rd of back on both sides.

(3) Incised scratch over the upper aspect of left shoulder 9x2 cms.

(4) Incised wound seen over the middle of left side back extending from posterior lateral border 11 x 0.8-0.5 cms x fascia deep. Both ends were acute.

- (5) An oblique incised wound on the upper quadrant of left buttock. 14x1-0.4 cms x fascia deep. Both ends were acute.
- (6) Transverse incised wound on the outer aspect of left thigh 6 x 2.5 -1.5 cms x muscle deep.
- (7) Transverse incised wound on the back of upper part of neck on the right side 9 x 0.8-0.5 cms x fascia deep.
- (8) An oblique cut injury with regular margins on the right lower back above the buttock x 2 1 - 0.5 cms x muscle deep.
- (9) Cut injury with regular margins over the lateral aspect of left elbow 3 x 1.5 cms x fascia deep.
- (10) Transverse cut injury with regular margins over the outer aspect of middle of right arm 4 x 1 x 2.5 cms.
- (11) Transverse cut injury with regular margins over the front of middle of left side neck 6x1 cms x fascia deep. Medial end of this wound was situated in the midline on the lower border of thyroid.
- (12) Transverse cut injury with regular margins on the left antero-lateral aspect of middle of neck 4x1 cms x muscle deep.
- (13) Cut injury of right fourth webspace 5 x 3-1 cms x bone deep. Cut fracture and disarticulation on the metacarpo-phalangeal joint of right little finger.
- (14) Transverse cut laceration on the back of right side of head situated just above the mastoid 6 x 2 cms x bone deep. Cut fracture of underlying bone seen.
- (15) Cut laceration over the back of head in the midline over the parieto-occipital region 6 x 2.5 cms x bone deep. Cut fracture of underlying the bone seen.
- (16) Obliquely transverse gaping cut laceration seen in the front and sides of the neck extending from the middle of right jaw to the left internal occipital protuberance above the thyroid 20 x 6 x 4-1 cms. The upper part of left side

thyroid, all the muscles of the neck on the left side, left internal and external carotid arteries, left jugular veins and nerves were found severed.

(17) Transverse cut laceration on the left side of face below the ear lobe extending from the middle of cheek to the left mastoid 13 x 4-2 cms x bone deep. Cut fracture of underlying ramus angle of left mandible and mastoid process seen.

(18) An oblique cut laceration on the left side of head behind the ear extending from the upper part of left mastoid to the posterior margin of left temporal bone 10x3 -1.5 cms x bone deep. Full thickness cut fracture of the left temporal bone through which the brain matter was leaking out.

(19) Multiple parallel overlapping cut lacerations (3 in numbers) seen on the left parieto-temporal region of the head extending from the left forehead to the left parieto-occipital region over an area of 22 x 8-3 cms x bone deep. Intervening skin bridges were found cut and hanging loosely. Comminuted full thickness cut fracture of the left parietal, temporal and occipital bones into multiple pieces with displacement. Underlying brain was also found cut and was coming out through these wounds.

(20) Cut laceration of the right forearm and hand extending from the lower 3rd of right forearm to the medial border of right palm 15 x 4-2 cms x bone deep. Flexor tendons of right forearm were exposed. Right wrist was cut fractured.

(21) Cut laceration of right 2nd webspace in the dorsal aspect. 9 x 2.5 cms x bone deep.

(22) Irregular cut laceration of dorsum of right thumb 6 x 2.5 cms x bone deep. Cut fracture with disarticulation of metacarpo-phalangeal joint of right thumb.

(23) Multiple cut lacerations of varying sizes 12 6 x 6-2 cms x bone deep of the lower 3rd of left forearm, left wrist and hand involving both palmer and dorsal aspects. Cut fracture of left wrist joint, metacarpo-phalangeal joints of left thumb, left index, left ring finger and proximal inter-phalangeal joints of the left ring finger.

Flexor and extensor tendons of the left hand were found cut at the dorsal ends.' In the post-mortem certificate Ex. P.9 issued by him, he has opined that the deceased appeared to have died due to multiple cut injuries sustained by him.

10. The post-mortem constable recovered the blood stained shirt MO-4 from the dead body after the post-mortem examination was over and entrusted the same to P.W. 8 for further investigation in the matter.

11. On 16-8-2001. Kuyil Suresh (A. 2), Kannan (A.4) and Nathan (A.3) surrendered before the learned Judicial Magistrate, Ambattur. Those accused were taken into police custody by P.W. 8 on 23-8-2001. The second accused Kuyil Suresh (A.2) gave confession statement in the presence of Selvaraj, P.W. 6. All the aforesaid three accused gave confession statements in the presence of Selvaraj. On the basis of the admissible portion Exs. P. 14, 15 and 16 in the confession statement of those accused, the knives alleged to have been used by those accused were recovered in the presence of the aforesaid witness.

12. The fifth accused Jegan was arrested at Vijay Nagar, Velacherry bus stand at about 1.00 p. m. on 24-8-2001. The accused, who were taken into police custody as well as the fifth accused, who was arrested, were remanded to judicial custody. The Inspector of Police P.W. 9 who succeeded P.W. 8 took up to the case for further investigation and having obtained the chemical report Ex. P. 17 laid final report as against all the accused for offences under Sections 147, 148, 449 and 302 r/w Section 149 of the Indian Penal Code.

13. The incriminating circumstances found in the testimony of the prosecution witnesses were put forth in the form of questionnaire to the accused under Section 313 of the Code of the Criminal Procedure. The accused, responding to the questionnaire, has stated that a false case has been foisted on them. They have virtually denied each and every inculpatory circumstances spoken to by the witnesses.

14. The trial Judge, having relied upon the testimony of P.Ws. 1, 3 and 5 in the background of the medical evidence and the recovery part of the case of the prosecution, has come to the conclusion that the accused committed offences

punishable under Sections 148, 449 and 302 of the Indian Penal Code.

15. Learned Counsel appearing for the appellants /accused would submit that the evidence of Veerabhadran P.W. 1 to the effect that all the assailants numbering about ten came with a mask and attacked the deceased-Sekar and caused his death shakes the very foundation of the prosecution case. The said testimony of P.W. 1 was not challenged by the prosecution. If the accused were found masked, it would have been impossible for P.Ws. 1, 3, and 5 to identify the accused as spoken to by them. No identification parade was conducted in this case. Therefore, the learned Counsel for the appellants would submit that the entire case of the prosecution raises a doubt as to whether these accused were the perpetrators of the crime of murder.

16. The learned Additional Public Prosecutor would submit that the trial Judge has rightly returned a verdict of conviction on the basis of the ocular testimony of P.Ws. 3 and 5 in the background of the medical evidence and the recovery made by the Investigating Officer based on the confession statement of the respective accused. Therefore, such a verdict warrants no interference.

17. Veerabadran P.W. 1 has categorically stated that about 10 assailants came to the mechanic shop of the deceased-Sekar and attacked him indiscriminately with lethal weapons having sported up mask on their face. Therefore P.W. 1 could not identify any of the assailants. The prosecution has not challenged the version of P.W. 1 that the assailants came sporting a mask to disguise their identity. The unchallenged version of P.W. 1 examined on the side of the prosecution would disclose candidly that the assailants came with a mask on their face.

18. Guru P.W. 2 the owner of the mechanic shop of Sekar would depose that he was not aware as to how Sekar was murdered. Therefore, his testimony does not come to the rescue of the prosecution.

19. P.W. 3 would depose that five persons came by bicycle chasing the mechanic Sekar and attacked him and caused his death. He identifies all the accused for the first time before the Court. The occurrence had taken place on 13-8-2001. It is not the version of P.W. 3 that the accused were already known to him. P.W. 3 had

been examined only on 16-12-2003. It is highly doubtful as to whether he could have remembered the identity of the assailants after a lapse of two years. The Investigating Agency has miserably failed to take initiative to conduct the test identification parade facilitating P.W. 3 to identify the accused. P.W. 3 had come to know of the names of the accused only through print media. But surprisingly he had given out all the names of the accused when he was examined even during the course of inquest conducted by the Investigating Officer P.W. 8. P.W. 8 has categorically stated before the Court that P.W. 3 informed him of the names of the assailants when he conducted the inquest. If P.W. 3 had come to know of the names of the accused only through the print media, he would not have reeled out the names of the accused during the course of inquest itself.

20. The evidence of P.W. 3 will have to be considered in the light of the evidence of P.W. 1 who would state that the assailants numbering ten came with a mask on their face. If we read the testimony of P.Ws. 1 and 3 together, we can easily come to the conclusion that there would have been no possibility for P.W. 3 to identify the accused herein in the open Court.

21. The other testimony relied upon by the prosecution is the evidence of Anbu P.W. 5, who is none other than the elder brother of the deceased-Sekar. It is his admission that except the first accused, the other accused were not known to him. He would state that the first accused came along with four other accused and attacked his brother and caused his brother's death. P.W. 5 could not attribute any overt act towards any other accused in this case. No test identification parade also was conducted facilitating him to identify the remaining accused who faced the case of murder in this case.

22. It is pertinent to refer to the medical testimony available in this case. Dr. Ravindran P.W. 7 has stated in the postmortem report Ex. P. 9 that the deceased-Sekar appeared to have died due to multiple cut injuries. Seetharaman P.W. 3 and Anbu P.W. 5 could not say which injury was caused by the first accused. Had they deposed as to which injury was caused by the first accused, then, we may try to find whether such an injury turned fatal and ultimately caused the death of the deceased-Sekar. The post-mortem doctor also has not specifically stated in his

opinion as to which injury out of 23 lethal injuries found on the person of the deceased cost the life of Sekar. Under such circumstances, it is quite impossible to attribute any of the lethal injuries to the first accused in this case.

23. As already discussed, we find that the role of the first accused is also highly doubtful. The alleged occurrence witnesses have come out with contradictory version. The testimony of P.Ws. 1, 3 and 5 does not appear to be cogent and convincing. We find that the testimony of one eye-witness cuts the root of the version of the other witness. Their evidence, therefore, does not inspire judicial confidence. We are disinclined to place any reliance on their unreliable and untrustworthy evidence.

24. The prosecution has miserably failed to establish beyond reasonable doubt the charges under Sections 148, 449 and 302 of the Indian Penal Code as against the appellants herein. In the above facts and circumstances, we are inclined to confer benefit of doubt on the accused as the prosecution has come out with doubtful version through P.Ws. 1, 3 and 5.

25. The fact remains that the second accused had not preferred any appeal as against the conviction and sentence recorded by the learned First Additional Sessions Judge, Chennai. For very many reasons, the second accused would have failed to prefer an appeal before this Court. We find that the second accused stands on the same footing as that of the other accused. We feel that the benefit of the judgment will have to be extended to the second accused also, who has not chosen to prefer any appeal as against the judgment of conviction.

26. The Hon'ble Supreme Court in *Vajrapu Sambayya Naidu v. State of A. P.*, has held as follows:

In this view of the matter, this appeal succeeds and the appellants are acquitted of all the charges levelled against them. We notice that the cases of accused 1 and accused 4, namely, Thammireddy Apparao and Lanka Tatayyalu, stand on the same footing as that of the appellants. For some reason they have not preferred appeals before this Court, but we feel that in the interest of justice they are also entitled to the benefit of this judgment. We, therefore, order their acquittal as well.

The appellants herein as well as accused 1 and 4, namely, Thammireddy Apparao and Lanka Tatayyalu, if in custody, shall be released forthwith, if not required in connection with any other case. This appeal is accordingly allowed.

As per the aforesaid dictum pronounced by the Hon'ble Supreme Court, the second accused is also conferred with the benefit of this judgment.

27. In the result, the judgment of conviction and sentence passed in S.C. No. 410 of 2003 on the file of the learned I Additional Sessions Court, Chennai is set aside not only as against the appellants in CrI. A. No. 354 of 2004, 523 of 2004 and 265 of 2005 but also as against the second accused, who had not preferred any appeal as against the judgment of conviction and sentence passed against him. All the accused including the second accused who had not preferred any appeal are acquitted of all the charges framed as against them and they are set at liberty. they shall be released from jail, if their detention is not required in connection with any other case.

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