

Srikanth and anr. Etc. Vs. State

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Court : Chennai

Decided On : Jul-06-2006

Reported in : 2006CriLJ4126

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

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 164 and 313

Appeal No. : Criminal Appeal Nos. 115, 309, 345 and 935 of 2004

Appellant : Srikanth and anr. Etc.

Respondent : State

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

Advocate for Pet/Ap. : Abdu Kumar, ;S. Asirmathuram, ;P. Ravikumar and ;K. Lavan, Advs.

Disposition : Appeal allowed

Judgement :

M. Jeyapaul, J.

1. The first accused who prefers Crl. A. No. 345 of 2004, the second accused who prefers Crl. A. No. 309 of 2004, the third and the fifth accused who prefer Crl. A.

No. 115 of 2004 have been convicted by the Sessions Court in S.C. No. 385 of 2003. The fourth accused who also suffered the judgment of conviction has not preferred any appeal.

2. The trial Judge convicted all the four accused/appellants and the accused who has not preferred appeal for offence Under Section 302 r/w 34, I.P.C. and sentence each of them to undergo life imprisonment and to pay a fine Rs. 5,000/- each, failing which to undergo six months' rigorous imprisonment. Though the Criminal Appeal No. 935 of 2004 was not listed we called for the bundle of the said appeal and took up the same along with these three appeals for disposal.

3. The charge as against the first accused is that on 3.3.2003 at the Auto stand opposite Koyambedu Market, the first accused Settu alias Dhanasekaran attacked Senu alias Sreenivasan with knife and thereby he committed murder. In the course of the same transaction, the second and the third accused caught hold of the head and hands of the said Senu alias Sreenivasan facilitating the first accused to stab him to death and thereby the second and the third accused committed the offence punishable Under Section 302 r/w 34, I.P.C. During the course of the very same transaction the fourth and the fifth accused also facilitated the first accused to commit the crime of murder and thereby fourth and the fifth accused committed the offence punishable Under Section 302, r/w 34, I.P.C.

4. The brief facts of the prosecution case as brought out in the testimony of the witnesses examined are as follows:

Soundarajan P.W. 1, Sekar P.W. 2, Peter P.W.3, Venkatesan P.W.4, Udayakumar P.W.5 and Saravanan P.W.6 are all auto drivers attached to the same auto stand opposite Koyambedu Market. Soundarajan P.W. 1 was elected as the President of the Auto Drivers Association.

5-6. Udayakumar P.W.5 was a close friend of Senu alias Sreenivasan since deceased. P.W.5 has spoken to the fact that there used to be quarrels between the first accused Sethu alias Dhanasekaran and himself and that Senu alias Sreenivasan, since deceased used to support him and the accused 2 to 5 used to support the first accused Settu alias Dhanasekaran, P.W.5 is a resident of

Nerkundram. The first accused Settu and the 5th accused Selvakumar alias Omakumar came to the house of P.W.5 armed with knives to attack him. But he having witnessed those two accused, took to heels from his house. This incident took place about a week prior to the occurrence. On the next day, P.W.5 informed Senu, since deceased about said incident which took place the previous day. Senu picked up a quarrel with the first accused and the fifth accused in support of P.W.5. The first accused proclaimed that he would take the life of either Senu or Udayakumar.

7. Soundarajan P.W. 1 saw Senu in his auto-rickshaw bearing Registration No. TSA-2616 owned by Elumalai P.W. 8 at about 8 p.m. on 3.3.2003. Soundarajan also witnessed the other accused going in the auto-rickshaw of the first accused bearing Registration No. TN-09 E-8366 during the night on 3.3.2003 near Kaliyamman Kovil Street. Sekar P.W.2 also spotted all the 5 accused at Kaliyamman Kovil Street at about 8.30 p.m. on 3.3.2002.

8. Kalidas P.W. 15 saw all the 5 accused at about 1 a.m. on 4.4.2003 at a tea shop in front of Kasi Theatre. He found all the 5 accused in a nervous state. When he enquired about their presence, the first accused told him that he murdered Senu. The first accused also requested P.W. 15 not to divulge the same to any other person.

9. Soundarajan P.W. 1 spotted Senu in a pool of blood in the Auto-rickshaw of the latter in the Auto stand opposite Koyambedu Market. He proceeded to Koyambedu Police Station at about 6.30 a.m. on 4.3.2003 and gave a complaint Ex. P. 1 to the Inspector of Police, Mr. Subbaiya P.W. 17. P.W. 17 registered a case in Crime No. 367 of 2003 Under Section 302 r/w 34, I.P.C. He prepared the printed First Information Report, Ex. P. 14 and dispatched the same to the learned Judicial Magistrate.

10. He rushed to the scene of occurrence and drew a rough sketch Ex.P. 15. He also prepared observation Mahazar Ex. P.4 In the presence of Malairajan P.W.7. P.W. 17 recovered blood-stained shirt M.O. 1, blood stained pants M.O. 2 and Auto-rickshaw M.O. 3 under Mahazar Ex.P.3 in the presence of the abovesaid witness.

11. He conducted inquest in the presence of Panchayatdars on the dead body of Senu and prepared inquest report Ex. P. 16.

12. Dr. Manokaran P.W. 16 on receiving a requisition from P.W. 17, commenced postmortem examination on the dead body of Senu at 12.15 p.m. on 5.3.2003 and he found the following injuries on the dead body of Senu:

Injuries:

(1) Nine (9) linear Parallel superficial Incised wounds 0.5 cm-1 cm apart measuring 17 cm-60 m (1) x 0.5 cm (B) x 0.5 cm (D) extending from right side of the neck, wound margins are regular and clean cut, one superficial incised wound entered deeply into the structure on right side of the neck and 'aroused common carotid artery, Extensive subcutaneous reddish haemorrhage on the right side of the neck, extensive pharyngeal and para-pharyngeal haemorrhage on right side of the neck.

(2) A central punctured wound at the middle of neck at 3-4 tracheal ring level 2 cm x 1 cm x lumendep; margins are regular o/d if entered into the lumen of trachea with haemorrhage in the mucosal surface of trachea;

(3) Reddish brown abrasions of the back of right shoulder 3 x 3 cm; 2 x 2 cm; 2 x 1 cm.

(4) A small puncture wound 0.5 x 1 cm X skindeep of the middle of abdomen, 5 cm above the umbilicus o/d the depth is 1 cm.

All the above injuries are ante-mortem in nature.

Internal Exam.:

Heart:

Normal in size, C/s All Chambers contain fluid blood; coronaries patent, lungs, liver, spleen, kidneys C/s pale.

Stomach:

Contains 300 cc of brown colour fluid with thick food substance present; No definite smell.

Brain:

Pale, Hyoid bone, Pelvis skull and scalp intact.

P.W. 15 has opined in the post-mortem certificate Ex. P. 13 that the deceased appeared to have died due to cut injury over the neck.

13. The blood-stained Khakhi colour pants M.O. 12 and Orange colour shirt M.O. 13 were recovered from the dead body. P.W. 17 got Information that A1, A3 and A5 had surrendered before the learned Judicial Magistrate, Thirumalai on 6.3.2003. Police custody of those three accused was taken by P.W. 17 on 7.3.2003. He examined them individually and recorded the confession statements voluntarily given by them in the presence of Shanmugam and Subramaniam. On the basis of the admissible portion Ex. P.6 in the statement given by A1, the admissible portion Ex. P.7 in the confession statement of A.3, and the admissible portion Ex. P. 8 in the confession statement of A5, the knife M.O. 4, blood-stained Gray colour pants M.O. 5, blood-stained Khaki colour shirt M.O. 6, blood-stained Gray colour pants M.O. 7, half sleeve khakhi colour shirt M.O. 8, another khakhi colour pants M.O. 9, khakhi colour shirt M.O. 10 and Auto bearing Registration No. TN-09 E-8366 M.O. 11 were recovered under relevant Mahazars in the presence of the abovesaid witnesses.

14. On 10.3.2003, all the abovesaid 3 accused were remanded to Judicial custody. The material objects recovered in this case were sent to the Judicial Magistrate for the purpose of consigning them to chemical examination. The other two accused were thereafter arrested and remanded to Judicial custody.

15. A.3 Sreekanth is the brother's son of Arumuga Nayakar. He has stated that A.3 came to his house and demanded a sum of Rs. 1,000/- from him about four months prior to the date of his examination on 4.11.2003. Ranganathan, P.W. 10 is the father-in-law of A.3. He would state that as per the demand made by A.3, he gave a sum of Rs. 1,000/- to him. Krishnasamy, P.W. 11 is the Metropolitan

Magistrate. He had recorded the statements of the witnesses Under Section 164, Cr.P.C. Gopinath P.W. 13 is the owner of the Auto-Rickshaw bearing Registration No. TN-09 E-8366 driven by A.5 Omakumar at the time of occurrence. Ramu, P.W. 14 would state that the first accused approached him to arrange a lawyer for the case of murder.

16. The investigating Officer P.W. 17. having obtained the Forensic report' Ex. P. 12 and the Chemical report Ex. P. 19 Laid the final report as against the accused for the offence Under Section 302 r/w 34, I.P.C.

17. The incriminating circumstances found In the testimony of prosecution witnesses were put to the accused Under Section 313, Cr.P.C. The accused submitted that a false case was foisted on them.

18. The learned First Additional Sessions Judge, Chennai relying upon the extra-judicial confession alleged to have been given by the first accused to Kalidas, P.W. 15. in the background of the prosecution version as spoken to by Udayakumar, P.W.5 and Soundarajan, P.W. 1, has come to the conclusion that all the accused joined together and committed the murder punishable Under Section 302 r/w 34, I.P.C.

19. The learned Counsel appearing for the appellant/accused would submit that the extra judicial confession alleged to have been given to Kalidas P.W. 15 does not inspire judicial confidence as P.W. 15 has been examined about 7 days after the occurrence. However, apart from Kalidas P.W. 15, there is no evidence to establish that these accused committed the offence of murder as alleged by the prosecution. The trial Judge has failed to see the extra Judicial confession in its proper perspective and proceeded to accept the same and record a judgment of conviction as against all these accused.

20. The learned Additional Public Prosecutor would submit that the extra judicial confession has been given by the first accused to his close friend Kalidas P.W. 15 immediately after the occurrence. The conduct of the accused involved in the crime will also have to be taken into consideration. The motive part of the case of the prosecution has been established by examining P.W. 1 to P.W. 5. The trial

Court has rightly come to the conclusion based on the testimony available on record that it was only these accused who committed the murder in pursuance of common intention punishable Under Section 302 r/w 34, I.P.C.

21. As rightly pointed out by the learned Counsel appearing for the appellant the whole case of the prosecution rests on the extra judicial confession alleged to have been given by A.1 to Kalidas P.W. 15. The latter would depose that he came down to the Tea shop opposite Kasi Theatre at about 1 a.m. on 4.3.2003. At that time, he found all the accused at the Tea shop. The first accused confided to him that the accused had murdered Senu. However, during the course of cross-examination, he had stated that he had not passed on the information either to his friends or to his kith and kin. It is not as if he had gone to the police station immediately after the occurrence. He has categorically deposed before the Court that from 4.3.2003 to 10.3.2003 he was very much available in Chenhai. His explanation is that he did not divulge the information to any person as the first accused A.1 asked him not to reveal the fact to any other person. It is found from his testimony that he came down to police station when A1, A3, A5 were brought to police station for examination. P.W. 15 would state that he had informed the police that A.1 confessed that he had committed the murder of Senu. The delay in examination of P.W. 15 has not been properly explained by the prosecution. If P.W. 15 had been examined the next day and he has come out with the extra judicial confession alleged to have been given by the first accused, then we can give some credence to his testimony. It is not as if P.W. 15 was threatened with dire consequences by A1. It is quite unnatural for a person not to reveal to anybody such information for seven days. Therefore, extra judicial confession reportedly given by A.1 to P.W. 15, is unreliable and untrustworthy. It is totally unsafe to rely upon such doubtful version to return a verdict of conviction.

22. Soundarajan P.W. 1 has spoken to the motive part of the prosecution story. Udayakumar P.W. 5 has also spoken the fact that the deceased used to Support him and pick up quarrel with the first accused. Though the motive part of the case of the prosecution has been spoken to by the witnesses when there is no ocular evidence to establish the crime alleged against them, we are unable to accept the case of the prosecution that it was only the accused who committed this crime.

23. P.Ws. 1 to 6 have spotted the accused at about 8 p.m. and 11 p.m. on 3.3.2003 near Kaliyamman kovil temple. There is no evidence to establish that they came there to annihilate Senu. The presence of the accused was not connected to the crime at all by the witnesses examined on the side of the prosecution. There is evidence to show that the third accused approached not only Arumugam Nayakar P.W. 9 but also father in law Ranganathan P.W. 10 demanding a sum of Rs. 1,000/- to go over to Chennai. Ranganathan P.W. 10 gave a sum of Rs. 1,000/- as demanded by Sreekanth A. 3. Such piece of evidence is not so material to incriminate the accused in a case of murder. The statement of P.W. 1 to P.W. 4 recorded by the learned Metropolitan Magistrate Krishnasamy, P.W. 11 would disclose that there was motive for the crime and the accused were spotted during night on the date of occurrence. P.W. 1 to P.W. 4 have spoken to such fact before the Court also when the trial was taken up by the learned Sessions Judge. The learned trial Judge should have avoided examining the Judicial Magistrate when the witnesses have not turned hostile. We cannot assume things based on the motive part of the prosecution story spoken to by this witnesses conjectures and surmises are quite alien to criminal jurisprudence.

24. The recovery has been made at the instance of A.1, A.3 and A.5 only after they were taken to police custody. As the recovery has been effected based on the alleged confession statement given by A.1, A.3 and A.5 when they were in the police custody, we do not attach much importance to the recovery part of the case put forth by the prosecution.

25. Of course the testimony of Dr. Manokaran, P.W. 16 in the background of the postmortem certificate Ex. P. 13 would establish that Senu @ Sreenivasan was put to death. But when there is no cogent evidence to connect the accused to the crime, we are unable to agree with the view taken by the learned First Additional Sessions Judge, Chennai. We find that the prosecution has miserably failed to establish that A. 1 to A.5 committed the murder of Senu @ Sreenivasan punishable Under Section 302 r/w 34, I.P.C.

26. In result the Judgment of conviction and sentence passed in S.C. No. 385 of 2003 by the learned First Additional Sessions Judge, Chennai is set aside and

Appellants 1 to 5 are acquitted of the charge Under Section 302 r/w 34, I.P.C. and they are set at liberty. They shall be released from jail forthwith if their presence is not required in connection with any other case. Appeals are allowed.

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