

J.Xavier Raj Vs. State

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Court : Chennai

Decided On : Jan-10-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 342, 148, 34; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal (MD) No.172 of 2011 and M.P.(MD)No.2 of 2011

Appellant : J.Xavier Raj

Respondent : State

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Mr.AN.Ramanathan, Adv.

Judgement :

1. Out of the five accused, who were convicted and sentenced in S.C.No.187 of 2010 by the learned Additional Sessions Judge, (Fast Track Court), Dindigul, A.2 Xavier Raj has directed this appeal. For the sake of convenience, throughout this appeal, we shall call him the appellant.

2. In the said Court, in the said case, A.2 stood charged for offences under Sections 342,148 and 302 r/w 34 IPC. After trial, on 9.2.2011, the learned Additional Sessions Judge, convicted A.2 under Sections 342, 148 and 302 r/w 34

IPC.

3. The learned Additional Sessions Judge sentenced him as under: (i) under Section 342 IPC : 1 year rigorous imprisonment (ii) under Section 148 IPC : 3 years rigorous imprisonment (iii) under Sections 302 r/w 34 IPC : life imprisonment and fine Rs.1,000/- in

default,

6 months simple

imprisonment.

The learned Additional Sessions Judge directed that all the said sentences shall run concurrently.

4. To bring home the charges levelled against all the accused including the appellant, prosecution examined PWs.1 to 17, marked Exs.P1 to17 and exhibited MOs.1 to 17.

5. The case of the prosecution as set out in the said evidence may briefly be stated as under:-

(i) PW.1 Innasiammal's son is Maria Bangiraj @ Paulraj (hereinafter Paulraj). They were residing in Vakkampatti. Six months prior to the occurrence Paulraj cut A.1 Kumar's leg with a knife. Quarrel arose between them. A.1's friends Xavier Raj (A.2/appellant), Chinnappar @ Chinnapparaj (A.3), Raja (A.4) and Thamaraiikkan @ Kannan @ Vellaisamy (A.5) separated both. A.1 threatened to kill Paulraj during the festival in Panjampatti village. (ii) On 17.4.2009, at about 11 p.m., after attending the festival, Paulraj returned home. After taking meals, at about 11.30 p.m., he was standing outside his house. His mother Innasiammal (PW.1) was also standing nearby. At about that time, A.1 to A.5 came wielding knives. They started throwing the knives at Paulraj telling that they could not kill him at the festival as he had escaped. Paulraj started running towards PW.6 Santhanaraj's garden. PW.1 followed them crying that they are going to kill her son. Since it was dark and as she had also thought that her son would have

escaped, she had returned home. On the next day, at about 7a.m., Palani, the Village Vice President told PW.1 that he had seen her son dead with injuries in the said garden. PW.1 rushed there. Found her son dead.

(iii) On the same day, at about 9.30 a.m., PW.1 went to Dindigul Taluk Police Station and gave Ex.P.1 statement to Thangaraj, Sub Inspector of Police (now dead). It was attested to by PW.2 Duraisamy @ Savarimuthu, brother of PW.1's husband. Thangaraj registered this case (Ex.P.13 F.I.R.). (iv) On receipt of a copy of the F.I.R., PW.16 Inspector, Balasundaram, took up his investigation. He came to the scene place. In the presence of PW.10 Ramu and one Thirumalai Raj, he prepared Ex.P.5 Observation Mahazar. Drew Ex.P.14 Rough Sketch of the scene place. Recoverd blood stained sand (MO.1) and plain sand(MO.2) under Ex.P.6 Mahazar. Examined PW.1 and other material witnesses and recorded their statement. In the presence of Panchayathdars, he held inquest over the dead body of Paulraj (Ex.P.15 Inquest Report). PW.16 sent the dead body through PW.15, Head Constable, Udayakumar with Requisition Ex.P.3 to Government Hospital, Didnigul for post-mortem.

(v) PW.9. Dr.Anbu Selvan conducted autopsy on the body of deceased Paulraj. He found the following :-

External Injuries:

(1) A deep cut injury over front of nex 25 cm x 6 cm (2) A cut injury from right ear to chin 20 cm x 3 cm (3) Two cut injury above right ear (10x3x3, 6x3x3)

(4) A cut injury above right side upper lip 5 cm x 2 cm (5) A cut injury on left hand little finger 3 cm x 2 (6) A cut injury over left writ 4 cm x 2

(7) Two cut injuries on left palm of the hand 4 cm x 2 (8) A cut injury on left elbow 4 cm x 2

(9) A cut injury on right hand thumb

(10) Two cut injuries on right elbow 3 x 2

(11) A cut injury on right wrist 4 x 2

(12) Four cut injuries seen over chest and abdominal wall 10 x 1 cm PW.9 opined that the deceased would appear to have died of shock and hemorrhage due to multiple injuries sustained (See Ex.P4 Post-Mortem Certificate). He also opined that the said injuries are possible by weapons like MOs.3 to 5 knives. (vi) On 19.4.2009 at about 9 a.m., near the Dindigul - Palani Round Tana Bus Stop, PW.16 arrested A.1 to A.5. In the presence of PW.11 John Ponraj, V.A.O and the Village Assistant Ramachandran. PW.16 recorded the confessional statement of A.1 Kumar @ Sivakumar (Ex.P.7). Pursuant to his confession, A.1 produced 3 knives (MOs.3 to 5) from a bush near a burial ground in Vakkampatti. PW.16 seized them under Ex.P.8 Mahazar in the presence of said witnesses. Thereafter, from his house in Michaelpatti, A.1 produced bloodstained clothes of A.1 to A.5 (MOs.6 to 10). PW.16 seized them under Ex.P.9 Mahazar. PW.16 produced the arrested accused to Judicial Magistrate No.1, Dindigul for judicial custody. PW.16 sent the case-properties to the Lab through Court. (vii) On account of the transfer of PW.16, PW.17 Inspector Asokan continued the investigation. He received the Chemical Analysis Reports and Post-Mortem Certificate and completed the investigation and filed the Final Report for offences under Sections 148, 342, 302 r/w 34 IPC in the committal Court.

6. The Trial Court examined each accused under Section 313 Cr.P.C. on the incriminating aspects in the prosecution evidence. All the accused have denied their complicity in this case. None of the accused had examined any witness or produced any document.

7. Mainly relying on the evidence of PWs.1 and 11 and Section 27 Evidence Act recovery, the learned Additional Sessions Judge, Dindigul found all the accused including the appellant guilty of offences under Sections 341, 148 and 302 r/w 34 IPC and sentenced them.

8. The said conviction and the sentence imposed upon him, have been challenged by A.2 Xavier Raj in this appeal. According to Mr.AN.Ramanathan, learned counsel for the appellant, this case is based on circumstantial evidence and none of the circumstances has been proved. The F.I.R. is fabricated. Even before the F.I.R. was lodged, police was present at the place of occurrence. There was

unexplained delay in sending the F.I.R. to the Court. The F.I.R is not free from doubt. PW.1 is not trustworthy. At every stage, there are material contradiction as between PW.1's version in Ex.P1 complaint and in her evidence in the Court. Her conduct in not calling any body to save her son is quite unnatural. It is highly unsafe to act upon her testimony. The learned counsel also contended that the seizure of MOs.3 to 5 knives and MOs.6 to 10 blood-stained clothes (MOs.6 to 10) in the presence of PW.11 has been introduced to rope in the appellant in this case. In the circumstances, the appellant deserves acquittal.

9. According to Mr. K.S.Durai Pandian, learned Additional Public Prosecutor, PW.1 has clearly spoken to about her seeing the accused chasing her son with knives and thereafter, her son was found dead.

10. This case is mainly based on circumstantial evidence. Each circumstance must be proved beyond all reasonable doubts. [See Sanatan Naskar and Another vs. State of West Bengal reported in (2011) 1 MLJ 687 (CrI) (SC)] The proved circumstances must form a complete chain unerringly proceeding towards the only conclusion that the accused is the author of the crime excluding any hypothesis of innocence. There should not be any missing link. This is the basic principle governing a case based on circumstantial evidence.

11. PW.1 Innasiammal, the mother of deceased Paulraj, is a main witness in this case. Through her a major circumstance, namely, she had lastly seen her son alive while the appellant and others chased him with knives has been projected. Much criticism has been levelled by the defence against her evidence.

12. The golden rule of proof of a fact is not based on quantity of witnesses but quality of witness. Plurality of witnesses is not the test. Even there may be a sole witness. But, if the evidence of such witness is convincing, inspire confidence in him, it is enough.

13. When the sole witness is closely related to the deceased, her evidence must be very cautiously and carefully approached.

14. It is appropriate here to note certain observations made by the Hon'ble Apex Court in *Badri V. State of Rajasthan* [AIR 1976 S.C. 560]. Hon'ble Supreme Court observed that since under the Evidence Act no particular number of witnesses are required for the proof of any fact, it is a sound and well- established rule of law that quality and not quantity of evidence matters. In each case the Court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting a person. If a witness, who is the only witness against the accused to prove a serious charge of murder, can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony.

15. In this case, prosecution relied on three incriminating circumstances, namely, (i) motive, (ii) the deceased was lastly seen alive while chased by the appellant and others. (iii) Recovery of MOs.3 to 5 knives and MOs.6 to 10 blood- stained clothes of the accused.

16. We shall see whether these circumstances have been proved and the proved circumstances form a complete chain without any missing link proceeding towards the appellant also as the perpetrator of the crime, namely, killing of Paulraj.

17. It is stated by the prosecution that there was prior enmity as between A.1 and the deceased. A.2 (appellant), A.3 to A.5 and A.1 are friends. In Ex.P1 complaint, PW.1, the mother of the deceased has stated that 6 months prior to the occurrence, her son had cut A.1 on his leg with a knife, appellant and A.3 to A.5 separated both, then onwards bad blood was brewing between them and they have avenged to kill her son at the Panjampatti festival.

18. Motive is a double edged weapon. It could be either way. In cases based on direct evidence, motive is not important. But in cases, based on circumstantial evidence, motive will act as a guide to test the veracity of the witnesses examined to speak about incriminating circumstances. Motive shall not merely be stated. It must also be proved like any other fact.

19. In her evidence, PW.1 did not state how the accused had nurtured ill will towards her son. In her evidence in the Court, she did not narrate so much of details she had given in her complaint as to the prior fight as between A.1, other accused and her son. Except making a vague sentence in her evidence that the accused are inimical towards her son, she did not give any further information. Thus, the motive stated in Ex.P.1 simply remains only as such without it being established by adducing relevant and sufficient evidence.

20. On 18.4.2009, at about 7a.m., Paulraj was found dead in a garden in the village. His body bore many cut injuries. He died of homicidal violence. It is stated by the prosecution that the mother of the deceased(PW.1) saw his son lastly alive while the appellant and other accused chased him with knives.

21. In her complaint Ex.P.1, PW.1 has stated that on 17.4.2009, at about 12.30 p.m., when her son Paulraj was standing outside their house, appellant and other accused came wielding knives and chased her son, telling that they would not spare him now. Her son ran for his life. The accused have continuously chased him. She followed them crying. She was followed by her husband's brother PW.2 Duraisamy @ Savarimuthu and his wife PW.3 Sesu Mary. However, PWs.2 and 3 in their evidence have stated that they did not see the accused so chasing the deceased and on that day they did not follow them at all. They were also not treated hostile by the prosecution. In her evidence, PW.1 took a different stand. She had stated that on that day, when the accused have chased her son, she alone followed them. She had also confirms this in her cross- examination.

22. In this case, in her complaint Ex.P.1, PW.1 had specifically mentioned a particular circumstance, namely, the accused have chased the deceased with knives and that was also witnessed by two more persons, namely, PWs.2 and 3. But, it was not substantiated by PWs.2 and 3 themselves. Top of it all, in her evidence in Court, PW.1 made a somersault. It is a material contradiction as between Ex.P.1 complaint and her oral/substantial evidence before the Court.

23. It is profitable here to note the observations of Hon'ble Apex Court made in Dr.Sunil kUmar Sambhudayal Gupta & Ors Vs. State of Maharashtra (2011 (1) MLJ (Crl) 672 (SC). The Hon'ble Supreme Court observed that where the

omissions amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

24. In her complaint, PW.1 had stated that at about that time, the accused have chased her son with knives. However, in her evidence in the Court, she had made improvement. She had stated that the accused have thrown knives at her son, while chasing him [vjphpfs; midtUk; fj;jp vLj;J tPrpdhh;fs;].

25. PW.1's house is situate in a street in Vakkampatty. On that day, she had seen her son in a grim situation. She was aware that his life is in danger and the accused have chased him with knives and they were about to kill him. She did not raise hue and cry, call the residents of her street to save her son's life. She had simply returned home. This conduct is quite strange and tells upon the veracity of her testimony and shaken the credibility of her evidence.

26. Another incriminating circumstance projected by the prosecution is recovery of MOs.3 to 5 Knives and MOs.6 to 10 blood-stained clothes of the accused based on Ex.P.7 Confessional Statement of A.1. All the accused were tried jointly in a single trial. The said Section 27 Evidence Act recovery based on the confessional statement of A.1 has been used by the trial Court as against A.2/the appellant.

27. As to the said recovery, PW.11 John Ponraj, VAO has been examined. In his evidence, PW.11 had vouchsafed the arrest of A.1 by the Investigating Officer PW.16 Balasundaram, recording of confessional statement and recovery of knives (MOs.3 to 5) and the clothes (MOs.6 to 10).

28. In her complaint Ex.P1, PW.1 had stated that her son was chased by A.1 to A5 each wielding a knife. However, in her cross-examination, she had stated that only one accused was wielding a knife and one accused was having a stick. As per the evidence of PW.11, 3 knives were recovered. The alleged recovery of weapons and bloodstained clothes of the accused appears to be stage managed. It shows that PW.11 is an obliging witness. In the circumstances, we cannot accept the recovery evidence pressed into service by the prosecution.

29. According to PW.11 she had seen the dead body of her son on 18.4.2009 at about 7 a.m. near a garden in her village. At about 9.30 a.m., she had lodged Ex.P1 complaint at the Dindigul Taluk Police Station. It is about 12 KMs away from the scene village. The Investigating Officer PW.16, Inspector, Balasundaram, in his cross-examination had admitted that on that day at the scene village, at about 7 a.m., itself he had seen the dead body of Paulraj. It shows that much before lodging the F.I.R. PW.16 was in the scene village.

30. F.I.R. was stated to have been lodged on 18.4.2009 at 9.30 a.m., at the Dinidgul Taluk Police Station. PW.14 Head Constable Subburaj stated that the F.I.R. was handed over to him only at 2 p.m.,. He had handed over the F.I.R. to the Judicial Magistrate No.I, Dindigul only at 5 p.m.,. The Magistrate's Court is not far away from the Police Station.

31. F.I.R. is not a substantive piece of evidence, but, an important piece of document in a criminal case. It is the First version concerning the commission of a cognizable offence (See Section 154 Cr.P.C.). It sets the criminal law in motion. It contains the earliest information as to the commission of a cognizable offence. It must be lodged within quickest possible time and must reach the Court in time. Any delay has to be explained satisfactorily. Every delay in registering the F.I.R., in despatching it to Court and in it reaching the Court gives scope and chance for additions and deletions. That is how to check the Investigating Agency it is mandatory that this earliest version as to the commission of a crime must reach the Court in time.

32. In this case, there is long unexplained delay in F.I.R. reaching the Court. In such circumstances, it cannot be stated that there is no substance in the submissions of the learned counsel for the appellant that the F.I.R is fabricated and has been lodged after much deliberation. In such circumstances, it makes virtually a dent in the very prosecution version of the case.

33. In this case none of the circumstances relied on by the prosecution has been proved and they do not form a complete chain unerringly proceeding towards the appellant also an author of the crime. It does not exclude hypothesis of innocence in favour of the appellant.

34. The Trial Court had taken into consideration the evidence of PWs.1 and 11 which ought to have been eschewed from its zone of consideration. Through these witnesses, prosecution has not at all established the guilt alleged as against the appellant. The prosecution has miserably failed to establish the charges levelled against the appellant. On the basis of the evidence adduced, the appellant cannot be held to have committed offences under Sections 341, 148 and 302 r/w 34 f IPC. He is entitled to be acquitted.

35. In the result, this Criminal Appeal is allowed. The conviction recorded and the sentences imposed upon the appellant/A.2 in S.C.No.187 of 2010 by the learned Additional Sessions Judge, Fast Track Court, Dindigul on 9.2.2011 are set aside. The appellant is acquitted of all the charges. He shall be released forthwith from the jail. Fine amount already paid shall be refunded to him. M.P.(MD) No.2 of 2011 is closed.

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