

CASE NO.:
Appeal (crl.) 1150-1151 of 2003

PETITIONER:
Ravi

RESPONDENT:
State Rep. by Inspector of Police

DATE OF JUDGMENT: 12/08/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan.

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

The above appeals were filed against the judgment dated 14/02/2003 passed by the High Court of Judicature at Madras in Criminal Appeal Nos.315 and 539 of 1999 filed by A-1 Ravi and A-2 Pakkaraji. The appellant herein was the appellant in Criminal Appeal No. 315 before the High Court and was A-1 before the Court of Additional Sessions Judge, Pondicherry. The learned Sessions Judge acquitted A-2 of the offence under Section 302 I.P.C. The State also has not filed any appeal against the said acquittal of A-2 of the offence of murder.

The following charges were made against the accused:

The Inspector of Police, Villianur Circle, Pondicherry has laid a charge sheet against the accused alleging that on 6.3.1996 at about 1230 hrs. the accused A-1 (Ravi), A-2 (Raja @ Pukkaraji) and four others alleging that they formed themselves into an unlawful assembly, armed with deadly weapons with a common object of such assembly, viz., to cause the death of one Shanmugam due to previous enmity and in furtherance of common object of such assembly, trespassed into the house of Adhikesavan, the brother of the deceased Shanmugam and caused bleeding injuries to Shanmugam by assaulting him with deadly weapons, all the accused chased him and forcibly took him in an auto rickshaw to maidan near Pavanar Nagar, Reddiarpalayam, Pondicherry beat him with deadly weapons left him with bleeding injuries and the deceased Shanmugam subsequently died in the General Hospital, Pondicherry and thus the accused had committed the offence of murder of Shanmugam and thus committed offences punishable under Sections 148, 149, 448/149, 364/149 & 302/149.

On behalf of the prosecution, PW-1 to PW-11 were examined and Exs. P1 to 22 and MOs.1 to 3 were marked.

The case of the prosecution, in brief, is as follows:-

The brother of the deceased Shanmugam, along with other brothers Krishnamurthy, deceased Shanmugam Siva and sister Gangabhavani were staying in Pudhu saram and Krishnamurthy after marriage went to his father-in-law's house. About 8 years prior to the incident, the deceased Shanmugam developed intimacy with one Sarasu and was living separately with her. About six months prior to the incident he came and started living five or six houses away from his house. About two or three days prior to the death of Shanmugam i.e. on 4.3.1996 Shanmugam's wife Sarasu committed suicide by self immolation by pouring kerosene and setting fire to herself and died. Shanmugam came and told P.W.1 that the brothers of Sarasu thought that he was responsible for suicide and they were threatening him and he also told that while he tried to save Sarasu, he sustained burn injuries on his hand and wanted to take treatment and so he wanted to stay in their house and his father also consented for the same and started staying with them and on 6.3.1996 A1-Ravi s/o Munuswamy came along with five persons armed with knife and

sticks and entered the house and asked whether Shanmugam was there and they got into the room where Shanmugam was lying and beat him there and Shanmugam ran out and the crowd chased him and she asked P.W.1 to find out what had happened to Shanmugam. P.W.1 along with his brother Krishnamoorthy went in search of him and he saw Shanmugam with bleeding injuries lying down on a maidan behind the house of A1 Ravi slightly breathing and without speech. They took Shanmugam in an autorickshaw to General Hospital, Pondicherry. He returned home at 4.30 p.m. and informed his mother about the same. He then lodged a complaint before police. Ex.P.1 is the complaint given by him. Shanmugam died on 7.3.96 due to the injuries sustained by him on 6.3.96.

The Sessions Judge, Pondicherry, on consideration of the evidence on record, came to the conclusion that the evidences of PWs 2,3 and 6 showed that A-1 and A-2 were accompanied by five other persons and that A-1 and A-2 assaulted the deceased Shanmugam and that A-3 to A-7 were not identified by any witnesses. The Sessions Judge further held that the first accused committed the offence under Sections 148, 364, 448 and 302 and for the main offence, he was sentenced to undergo imprisonment for life. For other offences, sentence of imprisonment ranging from 1 to 7 years were imposed. The second accused was found guilty of offence punishable under Sections 148, 448 and 324.

Aggrieved by the same, appeals were filed before the High Court by A-1 and A-2. The High Court, on consideration of the evidence on record came to the conclusion that the conviction of the accused for the offences is supported by legal materials and there is no illegality in the judgment under challenge. The High Court was also of the opinion that the delay in lodging the complaint has been reasonably and satisfactorily explained and that there was no suspicious circumstances at all in the oral evidence of PW-1. The High Court has also held that the evidence of PW-2, who is an eye witness to the occurrence is convincing and that the infirmities which are referred to in Ex.P-1 or Ex.P-18 would not affect the oral evidence of PW-2 regarding the occurrence. The High Court felt that the omissions pointed out in Ex.P-1 and in Ex.P-18 were too trivial in the fact, and the evidence of PW-2 established beyond doubt the involvement of A-1 and A-2 in attacking the deceased.

Dissatisfied with the above judgment, the appellant, A-1, preferred these appeals by way of special leave petitions before this Court. We heard Ms. Prashanthi Prasad, learned counsel appearing for the appellant and Mr. V.G. Pragasam, learned counsel appearing for the State. We have been taken through the evidence on record and the judgment rendered by the Sessions Court and also of the High Court.

Learned counsel appearing for the appellant raised the following submissions:

- 1) the reasons advanced by the prosecution witnesses were not sufficient to explain the enormous delay in filing the FIR and that the High Court has erred in coming to the conclusion that the delay has been explained properly.
- 2) The complaint lodged by the complainant PW-1 at the Reddiarpalayam is well outside the jurisdiction of the alleged place of occurrence and that the High Court has failed to appreciate that there seems to be no reason or explanation as to why PW-1 has not given the complaint at the D Nagar Police Station which is the nearest one and the one to which the jurisdiction pertains to.
- 3) The prosecution has failed to establish beyond reasonable doubt the guilt of the accused, appellant herein.
- 4) The non-examination of the material witnesses more so of the eye witnesses is fatal to the prosecution and hence the impugned judgment of the High Court ought to be set aside.

Per contra, learned counsel appearing for the State submitted that the High Court, on a careful consideration of the evidence on record and under the circumstances, has rightly found A-1 guilty for the offence under Section 302

IPC and is not wrong in relying on the evidence tendered by the witnesses who were relatives.

In the background facts of this case, the point for determination is whether the prosecution has proved its charge against the appellant A-1 who was convicted and sentenced to undergo the various sentences imposed on him by various sections of the code.

We have gone through the evidence on record and the judgments rendered by the Sessions Court and also of the High Court.

The contention of the learned counsel for the appellant, in our opinion, has no force since the prosecution sought to prove its case based on the eye witnesses to the incident PW2, PW3 and PW6 which clearly implicate the accused and that A1 and A3 had grudged against the deceased consequent to the death of their sister Sarasu. A1 and A2 also gave confession statements independently and on the basis of the statements of A1, the knife MO2 and the shirt MO2 were recovered under the mahazar Ext P6 and on the basis of the statement of A2 the wooden reaper MO1 was recovered under Ext P5. MO 1 to 3 contained blood stains and the blood on the shirt was identified as human blood.

Learned counsel for the appellant contended that the evidences of PW1 and PW2 should not be relied upon since they are related and are interested witnesses and there was no confession and the recovery alleged to have been effected by the prosecution. We are unable to appreciate this contention. It is settled by catena of cases by this Court that the evidence of eye witnesses cannot be rejected merely because they are related. In such a situation, the evidence of P.W.2 in the present case, there is no strong motive or ill-will on the part of P.W.2 to exonerate the real person who caused the injuries to her son and to implicate the accused.

Learned counsel for the appellant contended that there is inordinate delay in lodging the complaint. This contention, in our opinion, has no leg to stand.

On the fateful day, all the six accused were appeared armed with knife and stick and by entering the room where Shanmugam was sleeping. A1 attacked him with a knife followed by another person with a dark complexion hitting him with a stick. Out of fear, Shanmugam started running out of the house for safety chased by all the accused, which was watched by P.W.2 and others at home. P.W. 2 tried to reach them but she could not and she came to know that her son was taken in an autorickshaw by the assailants. At 1.30 p.m., on that day her other son, namely, P.W.1 came home, to whom she informed as to what happened and requested him to find out as to what happened to Shanmugam, since deceased. He came home around 4.30 p.m. and informed her that Shanmugam his brother that he is lying in an open ground near Bhoomiyanpet and that he had admitted him in the hospital. She had identified the person having dark complexion, in the test identification parade held, as A2 P.W.1 is admittedly not an eye witness to the occurrence but had stated as to what his mother told him about the occurrence but had stated as to what his mother told him about the occurrence on reaching the house at 1.30 p.m. On hearing about the same from his mother, he went in search of his brother and he found his brother lying in an open ground struggling for life. Accordingly, after admitting him in the hospital, he came home at 4.30 p.m. informed his mother/P.W.2 and then went to the police station to lodge the complaint, Ex.P.1. The above facts would clearly go to show that there is no delay in lodging the complaint.

P.W.8 Thiru P. Nallathambi Judicial First Class Magistrate has stated that on 25.3.96 he received a requisition to conduct identification parade as per Ex.P10. Consequently, he conducted identification parade on 28.3.96 at 3.00 p.m. in the Central Jail premises. Three chances were given to the witnesses P.W.2 and Gangabhavani to identify A2 Raji @ Pukkaraj who correctly identified him in all the three chances. Ex.P11 is the record of the test identification parade containing 3 sheets.

The contention of the learned counsel for the appellant that the complaint has not been registered within the Police Station which has a jurisdiction. This contention also has no force. This point of jurisdiction was

not urged before the Sessions Court and also before the High Court. This was raised by the learned counsel for the appellant at the time of addressing the arguments before us. Hence, we decline to entertain this plea at this belated stage.

We have carefully gone through the annexures, the evidence of P.W.2 who is an eye-witness. Her evidence is cogent and convincing. In her evidence she stated that the deceased Shanmugam has been living with one Sarasu for about 8 years prior to his death and six months prior to his death, they came and were living in a house nearby their house. About a week prior to that he was staying in their own house. About a week prior to the death of Shanmugam, sarasu committed self immolation by pouring kerosene on herself and died after four or five days. A1-Ravi, the brother of sarasu and her mother, and brothers thought that shanmugam was responsible for the death of sarasu and beat him. Deceased shanmugam told them that he fears danger to his life and wanted to stay in their house for safety purpose. They also consented for that. On 6.3.96 at 12.30 p.m. Shanmugam was lying in the room of her house while PW-2, her husband Adimoolam and daughter Gangabhavani were having food and at that time, A1-Ravi along with six persons armed with knife and sticks entered into their house and went inside the room where Shanmugam was lying and attacked him. A1 Ravi assaulted Shanmugam with knife and a person with black complexion beat Shanmugam with a stick. Unable to bear the beatings Shanmugam climbed down the staircase and started running and the seven persons chased him. When she came out she found that all the seven persons forcibly took Shanmugam in an autorickshaw. She told this fact to P.W.1 at 1.30 p.m. when he came to her house. P.W.1 and her other son Krishnamurthy went in search of Shanmugam and at 4.30 p.m. P.W.1 came to her and informed her that Shanmugam had sustained injuries and was lying near Boomianpet and that they admitted him in Hospital. Subsequently, her son Shanmugam died. She has stated that she identified the second accused before Magistrate in the jail as the person with black complexion who beat her son apart from A1.

P.W.7 \026 Dr. R. Balaraman who conducted the post mortem examination on the dead body and on external examination found seven injuries and on internal examination, there was sub-dural haemorrhage over left cerebral hemisphere. Brain was odomatous. Extensive contusion was seen over the left side of neck at the level of hyoid bone. Viscera was sent for chemical analysis and it was free from poison. He gave his final opinion on 30.12.1996 that the deceased shanmugam died of injuries on head and neck. Ex.P7 is the post mortem examination report and Ex.P8 is the chemical examiner's report. Ex.P9 is the final opinion. All the injuries in Ex.P7 were ante-mortem in nature. Injuries 1 and 2 with the corresponding internal injuries are fatal in nature, sufficient to cause death in the ordinary course of nature. He has opined that injuries 1,3 to 6 are possible with No.1 while injury No.2 is possible with No.2 Injury No.7 can be a burn injury or may be due to some other reason.

P.W.10, Vijayasundaram, the Inspector of Police has stated that he recovered the weapon under a cover of the mahazar Ex.P5 and then proceeded to the house of A1 who identified and produced the Koduval Kathi (Knife) M.O.2 and a full hand shirt M.O.3 which were recovered under cover of mahazar Ex.P6. M.O. 1 to 3 contained blood stains. P.W.11, the Inspector of Police who took further investigation from P.W.10 obtained the opinion from P.W.7 Dr. Balaraman and examined him and also obtained a copy of the F.I.R. of D. Nagar Police Station pertaining to the death of Sarasu, wife of deceased Shanmugam who had succumbed to burn injuries, despite treatment given to her in the Government Hospital, Pondicherry. He further stated that he completed the investigation and laid the charge-sheet against all the accused under various sections.

For the foregoing reasons, we are of the opinion that the prosecution has established its case that A-1 has caused the death of the deceased and the evidence of P.W.2, P.W.3 and P.W. 6 which are important which clearly implicate the accused which caused the injury to the deceased. It is an admitted fact that the accused A-1 had been living with the deceased as his wife \026 P.W.2 the mother of the deceased Shanmugam knows A-1 Ravi. She

has in categorical terms stated that on the date of the incident A-1 came along with 6 persons and entered her house and attacked Shanmugam who was lying inside a room. She clearly identified A-1 as the person who was having the knife and assaulted the deceased. She does not know A2. She has also identified the accused at the identification parade.

For the reasons aforesaid, we hold that the prosecution has clearly established the guilt of the accused-appellant beyond any reasonable doubt and that the appeals filed by A-1, therefore, fail and are dismissed.

JUDIS