

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.283 of 1997

1. Karuppasami ... Appellants /
2. Muniasami Accused 1 and 2

-Vs-

State by:  
Inspector of Police,  
Ettayapuram Police Station. ... Respondent.

Criminal Appeal against the judgment dated 02.04.1997 made in  
S.C. No.98 of 1993 on the file of Principal Sessions Judge, Tuticorin,  
Chidmbaranar District.

!For appellants : Mr. G.Anandharangan,  
for Mr.K.Selvarangam and  
Mr. L.Mahendran

^For respondent : Mr. A.N.Thambidurai,  
Government Advocate,  
(Crl.Side).

:J U D G M E N T

Accused 1 and 2 in S.C.No.98 of 1993 on the file of Principal  
Sessions Court, Tuticorin are the Appellants. By the judgment dated 02.04  
.1997, the Sessions Court has convicted A.1 under Sec.304 (II) I.P.C. and A.2  
under Sec.304 (ii) I.P.C. r/w Sec.109 I.P.C. and sentenced them to undergo  
Rigorous Imprisonment for a period of eight years each.

2. The Accused and Prosecution Witnesses 1 to 3 are related  
as noted below:-

Chandramathi (P.W.1)

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=Parvathy (1st wife) =Guruvammal (2nd wife)

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----- Raju (Son)(deceased)

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Madasamy (Son) Muthammal  
(P.W.2) daughter of  
= Mariammal (P.W.3) P.W.1  
wife of P.W.2. |  
Karuppasamy (A.1)  
= Kaliasammal

Kaliasammal is the sister of Shanmugam (deceased Accused), who married A.1 -  
Karuppasamy. A.2 Muniasamy is the brother of Shanmugam.

3. The case of the prosecution could briefly be stated thus:-

Occurrence. P.W.1 (Chandramathy), P.W.2 (Madasamy), P.W.3 (Mariammal) and deceased Raju are residents of Kadalaiyur. The family of P.Ws.1 to 3 and Raju are engaged in preparing 'Artificial Hair' (rt[hp Ko fl;Lk;bjhHpy;). About three days prior to the occurrence (12.05.1991), family of P.Ws.1 to 3 and the deceased Raju went to Chemmaputhur in connection with their business. In Chemmaputhur, they stayed in Nadar Samuthaya Mandapam, - in front of Panchayat Board Office. A.2 - Muniasamy and deceased Accused Shanmugam also stayed with them.

4. A.2 and deceased Accused Shanmugam married the girls, (who are younger sisters to deceased Raju) within the prohibited relationship regarding which, Raju was frequently teasing them. On the date of occurrence, i.e. on 12.05.1991 - 11.00 a.m., A.2 and deceased Accused Shanmugam asked A.1 " uh\$%it ,d;Dkh tpl;L itj;jpUf;fpwha;>". Instigated by A.2 and Shanmugam, A.1 - Karuppasami inflicted two stab injuries on the chest and back of Raju. Raju died on the spot. The occurrence was witnessed by P.Ws.1 to 3.

5. Complaint. P.W.5 (Kuthappan) - Village Administrative Officer of Chemmaputhur came to the spot and enquired about the occurrence. P.W.1 - father of Raju informed P.W.5 about the occurrence. P.W.5 - V.A.O. recorded the statement of P.W.1 (Ex.P.1) at 11.30 a.m. He made his endorsement - Ex.P.2. Thereafter, Ex.P.1 - Statement was sent to Ettayapuram Police Station through the Village Assistant - P.W.6 ( Mariappan). Ex.P.1 was handed over in Ettayapuram Police Station at 1 .00 p.m. on 12.05.1991.

6. Registration of case. On receipt of Ex.P.1 - Statement, P.W.9 - Sub Inspector of Police registered the case in Crime No.208 of 1991 under Sec.302 I.P.C. under Ex.P.13 - First Information Report at 1.00 p.m. Exs.P.1 and P.13 were sent to Judicial Magistrate, Kovilpatti through P.W.8 - Police Constable. P.W.8 handed over the same in the Judicial Magistrate's Court at 2.30 p.m.

7. Investigation. P.W.11 - Inspector of Police had taken up the investigation. Scene of occurrence - near Panchayat Office, Chemmaputhur was inspected in the presence of witnesses P.Ws.5 and 6. Ex.P.3 - Observation Mahazar and Ex.P.16 - Rough Plan were prepared on the scene of occurrence.

8. Inquest. Between 2.00 to 4.00 p.m., P.Ws.1 to 4 were examined in the presence of Panchayatdors and inquest was held on the body of deceased Raju. Ex.P.17 is the Inquest Report. After inquest, body was handed over to Police Constable No.1308 with Ex.P.14 - Requisition for Autopsy. M.O.1 - Blood stained Vegetable Matter mixed with mud and M.O.2 - sample were seized from the scene of occurrence under Ex. P.4 - Seizure Mahazar.

9. Post-mortem. P.W.10 - Dr.Chellappa Reddiar, attached to Ettayapuram Government Hospital had conducted Autopsy on the body of deceased Raju. Noting the injuries on the chest and on the left scalp with corresponding internal injuries, P.W.10 issued Ex.P.15 - Post-mortem Certificate. He opined that the deceased died of cumulative effect of haemorrhage and shock resulting from injuries sustained. After the Post-mortem, blood stained clothes of the deceased - M.Os.4 to 7 were seized.

10. Arrest of the Accused. On 12.05.1991 - 5.00 p.m., A.2 and deceased Accused Shanmugam were arrested near Keezha Eeral. On being interrogated, deceased Accused Shanmugam had voluntarily given a Confession Statement, which led to the recovery of M.O.3 - Knife under Ex.P.5 - Seizure Mahazar. A.1 was arrested in connection with this case on 21.05.1991 and remanded to judicial custody on the same day. The seized Material Objects were sent for Chemical Analysis. On completion of investigation, charge sheet was filed against the Accused 1 and 2 and deceased Accused Shanmugam on 12.06.1991 under Ss.302 I.P.C. r/w 34 I.P.C.; 302 I.P.C. r/w 109 I.P.C. During Committal Proceedings, Accused Shanmugam died. Hence, the case against him abated.

11. To substantiate the charges against the Accused in the trial Court P.Ws.1 to 11 were examined. Exs.P.1 to P.17 were marked. M.Os.1 to 7 were remanded to the Court. The Accused were questioned under Sec.313 CrI.P.C. The defence is one of total denial. Eye witnesses P.Ws.2 to 4 have turned hostile. P.W.5 - V.A.O. and P.W.6 - Village Assistant have also not supported the prosecution case on the arrest of deceased Accused Shanmugam and A.2.

12. Upon careful scrutiny of evidence, the trial Court found that the evidence of solitary witness, viz. P.W.1 is spontaneous, natural and reliable. Finding that evidence of P.W.1 is strengthened by Ex.P.1 - Statement and the medical evidence, the learned Sessions Judge convicted Accused 1 and 2 and sentenced them to imprisonment as aforesaid. Aggrieved over the conviction, Appellants / A.1 and A.2 have preferred this appeal.

13. Taking me through the evidence, the learned counsel for the Accused assailed the findings of the trial Court contending that the trial Court erred in basing the conviction upon the solitary testimony of P.W.1 without properly appreciating the variations in his evidence regarding the time of the occurrence. The reliability of P.W.1's evidence is attacked on the ground that it suffers from inconsistencies and contradictions particularly on the time of occurrence. It is further submitted that in the light of hostility of P.Ws.5 and 6, arrest of Shanmugam and A.2 Muniasami is not convincing and while so, the trial Court erred in convicting A.2 also and

the same cannot be sustained.

14. Supporting the finding of the trial Court, the learned Government Advocate has submitted that the evidence of P.W.1 is well corroborated by the medical evidence. Further submitting that P.W.1 being an aged and rustic man, any variation in the time of occurrence would not in any way undermine his version and that the verdict of conviction does not suffer from any infirmity, warranting interference.

15. Upon careful reassessment of the evidence, impugned judgment, evidence and other materials on record, the following points arise for consideration in this appeal:-

(i) Whether the trial Court was right in finding the Accused 1 and 2 guilty under Ss.304 (II) I.P.C. and 304 (II) I.P.C. r/w 109 I.P.C. respectively on the basis of the solitary testimony of P.W.1 ?

(ii) Whether the conviction of the Appellants / A.1 and A.2 suffers from any infirmity warranting interference ?

16. P.Ws.1 to 3 and deceased Raju are residents of Kadalaiyur, who are engaged in the business of making Artificial Hair ( rt[hp Ko fl; Lk; bjhHpy; ). In connection with their business, they came to Chemmaputhur. A.2 and deceased Accused Shanmugam - brothers-in-law of A.1 also came to Chemmaputhur. All of them stayed in Nadar Samuthaya Mandapam, in front of Panchayat Board Office. P.W.1 - Chandramathy, aged 70 about years is living with his family members. It is quite natural that he had accompanied his family members, who came to Chemmaputhur in connection with their business. Presence of P.W.1 in Chemmaputhur is well explained and the same cannot be doubted.

17. P.W.1 - maternal grand-father of A.1 and father of deceased Raju is the key witness for the prosecution and in his evidence he has stated that A.2 - Muniasamy and deceased Accused Shanmugam had instigated A.1 saying " uh\$%it ,d;Dkh tpl;L itj;jpUf;fpwha; >". On being instigated, A.1 stabbed Raju with M.O.3 - Knife on the chest and on the back. Raju died on the spot. Though P.W.1 was aged about 90 years (SIC) at the time of giving evidence in the Trial Court, he has clearly narrated the occurrence.

18. P.W.2 (Madasami) - Maternal Uncle of A.1 and his wife Mariammal - P.W.3 and another relation Chinnasamy - P.W.4 are examined as eye witnesses. P.Ws.2 to 4 have not supported the prosecution case and were treated hostile. There is nothing strange in the hostility of P.Ws.2 to 4. To save A.1 and A.2 from the clutches of the case, they would not have supported the prosecution version. The prosecution version remains unshaken by the hostility of P.Ws.2 to 4. Likewise, non-examination of independent witness also cannot be urged. P.Ws.1 to 4 and deceased Raju, who are residents of Kadalaiyur temporarily came down to Chemmaputhur in connection with their business. While doing their work, they stayed in Nadar Samuthaya Mandapam. They were strangers to the place. The inter se quarrel may not have attracted the residents of Chemmaputhur. Even if others have seen the occurrence, they might not have been interested to come forward for being

witnesses. It would be unreasonable to expect examination of independent witness.

19. Reliability of P.W.1 - single witness. Entire prosecution case revolves around the solitary testimony of P.W.1. Even if the prosecution case against the Accused revolves on the evidence of single eye witness, it may be enough to sustain the conviction if the witness is competent, honest and a truthful witness. Prudence, however requires that some corroboration should be sought for in cases of a solitary witness, particularly where such witness happens to be closely related to the deceased. Where the evidence of the solitary eye witness inspires the confidence of the Court, the conviction can be based on the testimony of solitary witness.

20. Evidence of P.W.1 is to be tested for its credibility and reliability. As discussed earlier, though P.W.1 is the resident of Kadalaiyur, he came down to Chemmaputhur along with his family members in connection with their business. When his sons and other family members were in Chemmaputhur, it is quite natural for P.W.1 to have accompanied them to Chemmaputhur. His presence in Chemmaputhur is natural and satisfactory.

21. Relationship of the witness is not a ground for discarding the testimony nor can it be said that the solitary testimony of a related witness cannot form the basis of conviction. All that is necessary is that his evidence to be scrutinised carefully - whether his evidence is intrinsically reliable.

22. Let us now consider the evidence of P.W.1. It is not as if the evidence of P.W.1 stands in isolation. He is the Complainant, who set the criminal law in motion in Ex.P.1. His statement was recorded by P.W.5 - V.A.O. immediately after the occurrence at 11.30 a.m. Evidence of P.W.1 is substantially strengthened by his earlier version in Ex.P.1 - Statement.

23. Evidence of P.W.1 is assailed on the ground of variation in the time of occurrence stated by him in his evidence. The occurrence was at 11.00 a.m. In Ex.P.1 - Statement also P.W.1 has stated the time of occurrence as 11.00 a.m. But, while deposing in the Court, P.W.1 has stated the time of occurrence as 9.00 a.m. His statement on time cannot be said to be a material variation. The Villagers / Rustic persons cannot be expected to give time with precession. That apart, P.W.1 is an aged person. His age is said to be more than 70 years at the time of recording Ex.P.1 - Statement. While he deposed in the Court, his age is stated as 90 years (SIC). P.W.1 being aged and infirm, his statement regarding the time of occurrence cannot affect his credibility, nor does it suggest that Ex.P.1 is brought out after due deliberation.

24. The contention urged by the Accused assailing the version of P.W.1 lacks in force. As stated earlier, while P.W.1 was deposing in the Court, he was aged and infirm. The learned Sessions Judge had the opportunity of seeing and observing the demeanor of P.W.1. P.W.1 being the maternal grand father of A.1, has no ill will against his own grand son. It was suggested to P.W.1 that he is inimical towards his issues through first wife and he is more

affectionate towards his second wife. This suggestion has no basis. P.W.1 - an aged having lost his son, it is quite natural for him to come forward with the truth. Considering these factors, the learned Sessions Judge found P.W.1 as reliable and natural witness and that his evidence is of spontaneity. Absolutely there is no reason to differ from the same.

25. Evidence of P.W.1 and the prosecution case are corroborated by the medical evidence. During Autopsy, P.W.10 - Dr.Chellappa Reddiar noted the following injuries on the body of deceased Raju:-

(i) An oblique incised wound just below the left collar bone, anterior aspect of the Chest and it penetrates the parietal and visceral pleura and caused a vent in the lower lobe of the left lung. There is diffuse haematoma on the anterior aspect of upper half of left chest below the skin.

(ii) A transverse incised wound on the left supra-scapular region and it communicates through the 2nd left intercostal space posteriorly severing the descending Aorta.

Oblique incised wound on the left collar bone penetrated the parietal and visceral pleura, correspondents with A.1's overt act of stabbing on the chest; the second injury on the left scapular region correspondents to the overt act of A.1 on the back as spoken by P.W.1. Thus, the medical evidence corresponds to the overt act of the Accused - stabbing on the chest and the left scapula. Oral evidence of P.W.1 is consistent with the medical evidence.

26. The objective findings during investigation also lend assurance to the prosecution case. Scene of occurrence was near the Panchayat Board Office, Chemmaputhur. The body of deceased Raju was found with blood stained clothes. Injuries on the chest and left scapula were visibly seen. Blood stains were noted on the Vegetable Matter and mud - M.O.1. 'A' Group blood was detected in the blood stained clothes of the deceased. In M.O.1 - Vegetable Matter also, the same blood Group - 'A' Group was detected. This formidable scientific evidence strengthens the prosecution case and the evidence of P.W.1.

27. A.2 and deceased Accused Shanmugam were arrested on 12.05.1991 - 5.00 p.m. near Keezha Eeral. On being interrogated, deceased Accused Shanmugam had voluntarily confessed to his guilt. M.O.3 - Knife was seized near Kanmaikarai, Arunachalapuram Road. 'A' Group blood was detected in M.O.3 - Knife also. Though Accused Shanmugam is dead, arrest of Shanmugam along with A.2 and recovery of M.O.3 - Knife is a strong incriminating circumstance against Accused 1 and 2. Prosecution has well proved that A.1 has caused vital bodily injuries to the deceased Raju.

28. We are left with the question whether uttering of the words "uh\$%it ,d;Dkh tpl;L itj; jpUf;fpwha;>" by A.2 would amount to instigation to commit murder falling within the meaning abetment under Sec.109 I.P.C. A.2 and deceased Accused Shanmugam married the girls, (who are younger sisters to deceased Raju) within the prohibited relationship. In connection with the same, Raju is said to

have been frequently picking up quarrel and also teasing A.2 and Shanmugam. By the conduct of Raju, naturally, A.2 and Shanmugam must have had ill will towards Raju. At the time of occurrence, A.1 is alleged to have been instigated by A.2 saying "uh\$%it ,d;Dkh tpl;L itj,jpUf;fpwha; > ". This has provoked A.1 to immediately act and inflict the fatal injuries.

29. Law does not require that instigation should be in a particular form or that it should only in words and may not be by conduct. Whether there was instigation or not is a question to be decided on the facts of each case. Pursuant to the instigation, the act abetted was committed. Thus the act of A.2 clearly amounts to abetment within the meaning of Sec.109 I.P.C.

30. A.2 was arrested along with deceased Accused Shanmugam; no recovery was made at his instance; recovery of M.O.3 - Knife was at the instance of Shanmugam. Though recovery of M.O.3 - Knife by itself is not a incriminating circumstance against A.2, it is a strong piece of evidence against him to be reckoned with. Of course, P.W.5 - V.A.O. and P.W.6 - Village Assistant have turned hostile on the arrest of A.2, perhaps to save A.2 from the clutches of conviction. The hostility of P.Ws.5 and 6 on the aspect of arrest hardly affects the prosecution case against A.2. The learned Sessions Judge has carefully analysed the entire evidence and the reasonings and findings warrant no interference.

31. Lastly, we are to consider only the question of sentence. The occurrence was in a sudden altercation. Instigated by A.2 and deceased Accused Shanmugam, A.1 got enraged and struck the blows on the chest and back of Raju, causing injuries to the vital internal organs. From Ex.P.15 - Post-mortem Certificate, it is seen that the two stab blows have caused the following internal injuries:-

(i) it penetrates the parietal and visceral pleura and caused a vent in the lower lobe of the left lung. There is diffuse haematoma on the anterior aspect of upper half of left chest below the skin.

(ii) exploration of the incised wound on the left supra- scapular region, communicates through the 2nd left intercostal space posteriorly severing the descending Aorta.

32. The quarrel being un-premeditated. The blow having been inflicted in a heat of passion. Accused are unrefined persons, who move about Villages in connection with their business. Considering the circumstance of the occurrence and background of the Accused, reduction of sentence of imprisonment from eight years to six years would meet the ends of justice.

33. Therefore, the judgment of the learned Sessions Judge, Tuticorin in S.C.No.98 of 1993 (dated: 02.04.1997) convicting A.1 under Sec.304 (II)I.P.C.; A.2 under Sec.304 (II) I.P.C. r/w 109 I.P.C. is confirmed. Sentence of Rigorous Imprisonment of eight years each is reduced to six years of Rigorous Imprisonment each and this appeal is partly allowed.

Index:Yes

Internet: Yes

sbi

To

1.The Principal Sessions Judge,  
Tuticorin.

2.The Superintendent, Central Prison,  
Palayamkottai.

3.The Inspector of Police,  
Ettayapuram Police Station,  
Tuticorin District.

4.The Public Prosecutor,  
High Court, Madras.

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